United States Court of Appeals

for the Second Circuit

APPENDIX

75-7358

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IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 75-7358

UNITED STATES COURT OF APPEALS
FILED
DEC 1 197
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

WILLIAM F. BUCKLEY, JR.,

Plaintiff-Appellee,

—v.—

FRANKLIN H. LITTELL,

Defendant-Appellant.

JOINT APPENDIX

Volume II

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WILLIAM F. BUCKLEY, JR.,

v. 70 Civ. 2844

THE MACMILLAN COMPANY and
FRANKLIN H. LITTELL

April 24, 1974
10:00 A.M.

(Trial resumed)

F R A N K L I N H. L I T T E L L,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR MAHONEY:

Q Dr. Littell, when was "Wild Tongues" published?

A I don't think we have actually established that but it was sometime in the late spring of 1969.

MR. MAHONEY: Is there any possibility that we can establish that more definitely?

MR. BLASBAND: I will try to get that information for you.

MR. MAHONEY: Okay.

Q In your title of the book, "Wild Tongues, The [illegible] Social Pathology", what did you mean by social pathology?

A When I came back from Germany in 1958 I set up a graduate seminar in social pathology and in a sense

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I have created or helped to create that term. Soft sole pathology, as I used it, and use it, refers to illnesses, social diseases, not in the medical sense but in the sociological sense which undermine the health of a society.

The argument is that just as a good medical school has a pathological department or division so a good school of social sciences ought to have the study of pathology as an important part of its work.

THE COURT: I take it we can save time. All of that was interesting but try to listen to his question. He asked you what you meant by social pathology. He really wasn't asking about the background and so forth. He just wanted the meaning of the term.

Just to save time try to listen to his question and try to stick to his question as closely as you can.

THE WITNESS: I am sorry, I thought I gave a definition.

THE COURT: But in the course of that you told us about coming back from Germany. You told us about setting up your seminar. There is no harm done except maybe we can save time on future questions.

Just listen and within reason stick to his questions.

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Q Dr. Littell, for how long were you in Germany?

A I was there the better part of 10 years.

Q What were you doing there?

A I went in as a department of the army civilian, a specialist in religious affairs. We shifted over to the high commission on October 16, 1949 and I became a chief protestant advisor to the High Commissioner, Mr. McCloy.

Then I came home briefly and went back for five years as senior director or director in Europe for what was called the Franz Leiber Foundation.

Q What did that foundation do? What was its function?

A The public function of the foundation was to work with German churches and universities and other educational institutions.

Q Did you have occasion during your time in Germany to become familiar with and study the Nazi movement?

A Yes.

Q Do you regard yourself as having an expert knowledge of that subject matter?

A I think that is something my peers would have to say rather than I.

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Q What is the extent of your study of the Nazi movement? What have you done in that area?

A I have published two or three books which have dealt with it and twenty or more major articles or chapters of other books.

Q Are you thoroughly conversant with the details of the biography of Joachim VonRibbentropp?

THE COURT: I didn't get the question.

MR. MAHONEY: I asked whether he was thoroughly conversant with the biography of Joachim VonRibbentropp.

THE COURT: What biography?

Q Are you conversant with his life and career and who he was and how he fitted into the public scene of Nazi Germany?

A I was at that time.

Q Were you when you wrote "Wild Tongues"?

A I hadn't spent too much time on him for six or eight years before that.

Q Did you know the basic data of his career, that he was executed as a war criminal, that he had been Hitler's foreign minister, that he had signed a Hitler-Stalin pact with a Molotov cocktail?

THE COURT: Take it one at a time. Are you asking what he knows now or when he wrote "Wild Tongues"?

Q When you wrote "Wild Tongues" did you know that VonRibbentropp had been executed as a Nazi war criminal?

A Yes.

Q Did you know that he had been Hitler's foreign minister?

A Yes.

Q Did you know that he had executed the Hitler-Stalin pact with a Molotov cocktail?

A I don't recall whether that fact was in my mind at the time.

THE COURT: But you knew that he was at one time the foreign minister for the Nazi government, right?

THE WITNESS: Yes.

Q Dr. Littell, how do you define a fellow traveler?

A I think I have defined it in the book.

Q Do you want to refer to the book then to give your answer?

A I was looking for a short statement rather than reading the whole column. I think I will simply answer briefly and directly then rather than taking the Court's time to go through fingering through the pages.

I understand the fellow traveler to be a person

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who himself is a freewheeler but appears on letterheads and in the constant association with persons under either fascist or communist discipline, persons who represent a block of theory and action.

Q When you wrote "Wild Tongues" did you regard Mr. Buckley as a fellow traveler?

A It seemed to me that Mr. Buckley was a person who although a freewheeler had appeared a rather striking number of times on letterheads of organizations and in associations which I identified with the radical right.

Q What do you mean by a freewheeler?

THE COURT: Let me hear the answer.

(Answer read)

Q First, you were talking about fascist and then about radical right.

Do you equate them?

A No, I don't.

Q Are you saying Mr. Buckley was a fellow traveler of the radical right, of the fascist, or both?

A I regarded him at that time as a fellow traveler of the radical right.

Q I refer you to page 154 of your deposition where you say that Mr. Buckley has been not a radical rightist and not a fascist himself but heavily in their

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magnetic orbit.

Do you still believe that? I am talking up to 1968. I want to emphasize that point. I think he actually played a different public role since then, just to give you a full context. —

MR. BLASBAND: Could you give me the page of that.

MR. MAHONEY: 154. I am not sure we will be using the deposition all that much but we will get a xerox to the Court.

THE COURT: What was the passage on page 154? I am not sure there is a pending question.

MR. BLASBAND: There was no question.

MR. MAHONEY: There was a question.

THE COURT: Frame the question.

MR. MAHONEY: I will frame the question again.

Q The question is, and the question starts:

"Q Will you briefly describe the relevance of this article, one of the documents that was being discussed, to the publication.

"A In the list of attacks that were made on me and on the Institute for American Democracy, Fred Schwartz played a very prominant role. He rode professiona

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anticommunist waves and Mr. Buckley's defense of Fred Schwartz and attack on the Antideformation League seems to me to be a part of the general picture."

"Q Which is?

"A Which is Mr. Buckley has been not a radical rightist and not a fascist himself but heavily in their magnetic orbit. I am talking up to 1968. I was to emphasize that point. I think he has actually played a different public role since then."

I am asking you, Dr. Littell, if you are of the opinion that Mr. Buckley was in the magnetic orbit not only of the radical right but of the fascist up until 1968?

MR. BLASBAND: Your Honor, excuse me, that wasn't the testimony that was given.

THE WITNESS: Your Honor, there is an error in the testimony, for one thing.

THE COURT: Let's hear Mr. Blasband.

MR. BLASBAND: "Which is Mr. Buckley has not been a radical rightist and not a fascist himself but heavily in their magnetic orbit. I am talking up to 1968."

As I understood it, the question was does he still believe he is in the orbit of the fascist, is that

it?

MR. MAHONEY: In the orbit of the radical right and the fascists up until 1968, that is my question.

MR. BLASBAND: Okay.

A I made that statement in good faith and I don't deny that I made it. Is that your question?

Q Yes, sir. I am asking whether you still adhere to that statement.

THE COURT: He says he does.

MR. MAHONEY: Fine.

THE COURT: You can read any part of his deposition. He is a defendant and you can read it.

MR. MAHONEY: Fine.

THE WITNESS: Excuse me, your Honor, there is one error in the transcript, a purely verbal one but I notice your copy still has it. What I said is that he rode the wave and they have in there wrote somehow.

MR. MAHONEY: Okay.

Q You said earlier, Dr. Littell, that you had seen Mr Buckley on the letterheads of many radical right organizations. Would you tell me what organizations you are talking about?

A Well,three of them were entered yesterday, was it? Wasn't that the case where we came into -- I

gave up my copies but in any case there were three organizations there.

THE COURT: Take your time and get any papers you need.

I think he wants the Monroe Doctrine Committee.

MR. MAHONEY: Is the Campaign for the 48 States, the Committee for the Monroe Doctrine and the Committee for Summit Entanglements, Exhibit H, J and K.

THE COURT: I think I have those.

I give you H, J and K. Are these the items you are referring to?

THE WITNESS: Yes, the titles remind me of what we are talking about. I had some more which I didn't submit.

THE COURT: You are referring to the Committee for the Monroe Doctrine, the Campaign for the 48 States. was that one of them?

THE WITNESS: Yes, sir.

THE COURT: And the Committee against Summit Entanglements was another, right?

THE WITNESS: I didn't understand whether Mr. Mahoney asked me a general question or whether he was referring to those.

MR. MAHONEY: You referred to those.

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I asked you, Doctor, if I recall correctly, what organizations we were talking about and you said that there were three that were in evidence yesterday and I identified them for you.

THE COURT: You are asking about the letterheads of organizations of radical right groups?

MR. MAHONEY: That is right. Anything he considers, not confined to anything we have seen here so far. I just want to know all the organizations that he deemed radical right groups on whose letterheads he had seen Mr. Buckley when he wrote "Wild Tongues".

THE WITNESS: I think the term more accurately i masthead because that has to do with organizations as well as publications. I would include the American Mercury, in addition.

Q Any others?

A I have a xerox of that reference. That is the famous J.B. Matthews' attack on the protestant churches.

Q Referring to this --

MR. BLASBAND: Could we have that marked, your Honor?

THE COUR T: Yes.

(Plaintiff's Exhibit 52 was marked for identification)

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Q Referring to Plaintiff's Exhibit 52, does that bear a copyright 1953 by American Mercury Magazine?

A I read it the same way you do, sir.

Q The Court can't tell. Does it say "Copyright 1953"?

MR. BLASBAND: The document speaks for itself.

MR. MAHONEY: It's not in evidence, and, Mr. Blasband, I would like to conduct my own examination.

Q Is that a 1953 document, sir?

A No, it's not. It says --

THE COURT: Tell us what it is. What is Exhibit 52 for identification?

THE WITNESS: I beg your pardon? It says the American Mercury. This is indicating Mr. Buckley as one of the editors and then this is the infamous or famous attack by J.B. Matthews on raids in our churches.

THE COURT: That is a xerox copy of the masthead of page 1 of an article?

THE WITNESS: Yes.

Q What is the date?

A 1953.

THE COURT: Do you offer that?

THE WITNESS: I offer that.

MR. MAHONEY: I am not offering it, your Honor

MR. BLASBAND: I will offer it, your Honor, if I may at this time.

THE COURT: Let's receive it.

THE WITNESS: I thought it was a response to a question directed to me.

THE COURT: We have a problem here. I will receive it.

(Plaintiff's Exhibit 52 was received in evidence)

Q What other mastheads or letterheads are you talking about, Dr. Littell?

A I think all that I would offer in addition to those mentioned, for clarification, would be an announcement concerning the Wanderer which is an ultra-rightist Roman Catholic journal and the announcement is that appearing in every issue our syndicated columns of William F. Buckley, Jr., General Thomas Lane, Robert Morris and Edith Kermit Roosevelt.

Q This is a newspaper in which his syndicated column appeared?

A This is an announcement that this is to occur.

MR. MAHONEY: Let's mark that for identification.

(Plaintiff's Exhibit 53 was marked for

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identification)

MR. BLASBAND: Could we have that also in evidence, your Honor?

THE COURT: Yes, we will have that received.

(Plaintiff's Exhibit 53 was received in evidence)

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MR. MAHONEY: Your Honor, Mr. Callahan calls my attention to the fact that that has already been marked as DXQ but it is my examination and we will put it in.

THE WITNESS: I have one other.

THE COURT: I would like to see Plaintiff's Exhibit 53.

We are obviously going to go through this. There are a lot of materials that are background for Dr. Littell's material in the book or for his testimony in court over one thing or another. I think you almost ought to have a checklist. I have got to know what these are. I have got to know when they date from and you just got to take your time and develop these things because otherwise we will just end up with a very vague record which really won't be useable.

You have got to be alerted to the question of whether there are organizations or people that should be

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gone into. A lot of times there will be references here that won't have to be gone into. We don't have to define every person referred to in every piece of paper. But if there is an organization or a person of significance who we haven't previously discussed you better bring that out. Just take your time.

MR. MAHONEY: Yes, sir.

Q Dr. Littell, do you know what this excerpt which has just been received as 53, do you know what it is, where its from?

A It's from the Bulletin of Group Research Volume 7, No. 61, page 44.

Q Do you know what date it is?

A 1968.

Q And the association indicated by this exhibit is that Mr. Buckley's syndicated column is going to be run in the Wanderer Forum or in the Wanderer Newspaper.

A Yes. He is featured by the most rightist of the Catholic journals.

Q Just respond to my questions, please.

THE COURT: You said Group Research. Is Group Research somebody who did clippings for you?

THE WITNESS: Group Research is the staff and archives -- the research end of the Institute of

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American Democracy, Institute for American Democracy, of which I was national chairman when I came under such heavy attack from the right.

THE COURT: Group Research is an arm of the Institute for American Democracy and they would cull out these items as part of their research, right?

THE WITNESS: Yes.

THE COURT: This is something --

THE WITNESS: With regular staff.

THE COURT: Can you tell us that date? You are saying that that represents a xerox of something that was issued by the Wanderer, right?

MR. MAHONEY: No, this is a statement by Group Research, an item of Group Research, about the Wanderer. That is what this is or purports to be.

THE COURT: That isn't what I got. Is that right?

THE WITNESS: Yes.

THE COURT: This is something written by Group Research?

MR. MAHONEY: About the Wanderer.

THE COURT: When did Group Research write that?

THE WITNESS: 1968, Volume 7, No. 61, page 44.

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THE COURT: So it was in 1961 they did this?

THE WITNESS: 1968.

MR. MAHONEY: It's Volume 61, the date is 1968, your Honor.

Q Do you know of any relationship of Mr. Buckley to the Wanderer other than that they ran his column?

A No.

Q Are you aware that 350 newspapers run Mr. Buckley's column?

A Is that the same column?

Q Yes.

A I heard this morning.

Q As of 1968 it would have been 250?

A Oh, yes. I heard that this morning.

Q Are you aware that the column is commercially offered for sale to newspapers around the country?

A Yes.

THE COURT: We will recess until 2:15.

(Luncheon recess taken at this point)

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AFTERNOON SESSION

2:30 P.M.

(Trial resumed)

FRANKLIN H. LITTELL, resume

THE COURT: We will talk about the schedule again. Dr. Littell has mentioned to me that he needs to know whether we are sitting on Monday. I have a criminal trial starting Monday. I thought I indicated and I thought it wasn't clear, if we are not finished Friday we will have to just fix some other date and it can't be Monday because unless there was a guilty plea in a criminal trial, which I obviously can't count on that, we will not be sitting on Monday. I think it would be better to see where we stand at the end of the day Friday. It could be we are finished.

If we are not, we will see how much more has to come and set a date that everybody can agree on.

MR. LITTELL: Thank you, sir.

THE COURT: There is an Exhibit 52 which apparently should include this feat.

MR. LITTELL: I spoke to Mr. Mahoney about

it.

THE COURT: Go ahead, Mr. Mahoney.

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q Dr. Littell, on the subject of American Mercury, the letterhead that you have there is dated 1953, is that correct?

A Right.

Q At the time you wrote this book were you familiar with the document that you have provided to us which is Plaintiff's Exhibit 37 which is the Group Research report on Mr. Buckley?

A You are not referring to the same document?

Q No, I am referring to the general Group Research report on Mr. Buckley.

A May I see it?

Q Surely. This one here.

A Yes, right.

THE COURT: Has that been put in evidence?

MR. BLASBAND: I will check, your Honor.

My notes indicate not.

MR. MAHONEY: I offer it in evidence, your Honor, as Plaintiff's Exhibit 37.

THE COURT: Mr. Mahoney, you know what these

documents are and I don't and the record doesn't. This is some document that hasn't been discussed before and I hope you are asking what it is and all about it. Apparently it is some document that he used and was familiar with.

MR. MAHONEY: Right.

Q Would you describe this document to the Court, Dr. Littell?

A The document referred to is a xerox of five or six pages prepared by Group Research Incorporated which was our research branch dated March 22, 1966.

Q And the subject matter of that report?

A William Frank Buckley, Jr., Stamford, Connectic

Q The plaintiff in this case?

A Right.

THE COURT: Exhibit 37 is received.

(Plaintiff's Exhibit 37 was received in evidence)

Q Dr. Littell, what did you derive or infer from Mr. Buckley's presence on the letterhead of American Mercury in 1953?

A I knew American Mercury as an antisemetic journal. I knew that they had published the most serious attack on the Protestant clergyman of America

with the exception of Billy Jean Hargis' famous Air Force Manual and that Mr. Buckley was one of the editors of the journal.

Q Are you familiar with this passage from Exhibit --

THE COURT: I think I better get a copy of 37.

Q Are you familiar with this passage, page 1 -- let me ask you this -- I will start over.

Are you familiar with this passage from Exhibit 37, page 1: "Another publication was American Mercury on which Buckley was listed on the masthead as Associate Editor from July of 1952 and a contributing editor from June of 1953 to April 1955. Buckley apparently broke with the magazine when its owner, Russell McGuire, injected antisemetism into the content. In any event, Buckley issued a memorandum four years later to writers for National Review that his magazine would not carry on its masthead the name of any person also listed on the masthead of American Mercury. See facts October-November 1959 published by the Antidefamation League. Note American Mercury has changed hands several times since then."

Were you familiar with that passage from the

Group Research report when you were writing "Wild Tongues" in 1968?

A I certainly had read it.

Q Turning to Defendants' Exhibit H -- do you have copies of that, Dr. Littell?

A Certainly someplace.

THE COURT: I know it is a problem with these copies. I cannot follow this without the document and I know the witness has to have them and you have to have them.

Q This is Defendants' Exhibit H, which is the Group Research report on the Campaign for the 48 States.

Do you have any idea of the date of the letterhead that is involved here?

THE COURT: I don't think it's been established on the record that this is the Group Research report on anything. Is it?

THE WITNESS: I can't really get at it. Up in the right-hand corner it usually gives it.

MR. MAHONEY: Do you have copies of what you provided?

THE WITNESS: Let me see.

THE COURT: This was introduced as showing the copy of the letterhead of page 2 and it was introdu

on the testimony of Mr. Buckley but this witness has never described these documents, H, J and K, to my knowledge. I think he better do it. Or you better ask him.

MR. MAHONEY: All right, your Honor.

THE COURT: Let's take H, J and K.

What is Exhibit H?

THE WITNESS: Campaign for the 48 States.

THE COURT: What is it? Who prepared it?

THE WITNESS: Exhibit H is prepared by Group Research Incorporated under date of August 12, 1963, a report on Campaign for the 48 States.

THE COURT: What is Exhibit J?

THE WITNESS: Exhibit J is a report by Group Research dated January 9, 1963 on Committee for the Monroe Doctrine.

THE COURT: What is Exhibit K?

THE WITNESS: Exhibit K is an organizational report prepared by Group Research under date of August 3, 1962 on the Committee against Summit Entanglements.

THE COURT: Go ahead, Mr. Mahoney.

Q Turning first to Exhibit H, do you have a copy of that?

A I think I gave in my copies --

Q I will show you this one. Is the letterhead here, page 2 of Exhibit H is this the letterhead that you had reference to in which you saw Mr. Buckley?

A Masthead, yes.

Q Do you know what the date of that is and I will direct your attention to the bottom of the first page.

A Which one are we on?

Q The Committee for the 48 States. Referring to the bottom line of page 1, can you tell me what the date of that letterhead is?

A Officers and leaders of the Campaign are produced on the next page from a brochure of about 1956.

Q Yes. Since 1956, that is the masthead you were referring to as one of the documents that you were relying on with respect to Mr. Buckley?

A I was relying on the Group Research report which includes then noting which ones are associated with the John Birch Society and so on.

Q I don't want to quibble, but you testified you relied on a masthead and the masthead you are talking about is this one, the 1956 one.

A Right, identifying persons with an organization.

Q Right.

THE COURT: Can we pause a minute?

Go ahead.

THE WITNESS: I think, incidentally, Mr. Mahoney, isn't this the one that Mr. Buckley said -- that it was his father?

Q Yes, he was eroneously listed on it.

A I don't know that, of course.

THE COURT: Go ahead.

Q Turning to Exhibit J, that is a Group Research report dated January 9, 1963 concerning the Committee for the Monroe Doctrine, is that correct?

A Yes, sir.

Q At page 2 of that, that includes a letterhead of the Committee for the Monroe Doctrine or a masthead, is that correct?

A Yes, I think that is right.

Q Is this the masthead to which you have reference when you said that this was another organization, another masthead or letterhead that indicated Buckley's fellowship with the radical right?

A Yes.

MR. BLASBAND: Objection. I don't think Mr. Mahoney should characterize the witness' testimony.

THE COURT: Overruled.

Q Can you tell me -- let me ask you this first: Do you know who the chairman of this organization was?

A It says here it was Edward V. Rickenbacker.

Q Can you tell me why Mr. Buckley's appearing on this masthead indicated to you a relationship of some sort to the radical right?

A Certainly not a Rickenbacker necessarily, but the organizational files are kept on extremists in the right wing and on the left wing and this was one which came from the right wing and it was identified as such particularly by the number of known members of the John Birch Society who were in the letterhead group.

Q What is the date of this letterhead?

A Not the report -- you mean the date of the report?

Q The date of the letterhead. It's shown on page two.

A January 4, 1963, a letter of appeal for support and money contained the following partial list of members about a dozen of whom are also known members of the John Birch Society.

Q How many members are shown there?

A I think your guess is as good as mine. It looks like a 90 or 100.

Q If you count I think you will find that there are 40 to a column and four columns is 160; is that correct?

THE COURT: We can add.

Q It's on the basis of a dozen out of 160 having membership in the John Birch Society that you concluded that this was a radical right organization?

A Yes. In the general context, yes.

Q That is of particular interest to Mr. Williams and me because we were also on the letterhead.

Turning next to Exhibit K, the Committee against Summit Entanglements, is Exhibit K a two-page report dated August 3, 1962 by Group Research concerning the Committee against Summit Entanglements? Is that correct?

A Yes.

Q Is the letterhead that is on page 2 of this Exhibit K, is that the letterhead to which you made reference as one of the letterheads on which you had seen Mr. Buckley that indicated some sort of relationship to the radical right?

A Right, that is the masthead.

Q On what did you base that conclusion?

A That it was the masthead?

Q No, the conclusion that Mr. Buckley's appearanc on the masthead indicated a relationship to the radical right.

A On the identification coming from Group Researc that it was a radical right organization plus the indication here which clearly shows that at least four-fifths of the officers and national board were Birchers.

Q What is the date of this report?

A The date of the report --

Q What is the date of the letterhead, I am sorry.

A The masthead is dated August 30, 1959.

Q Do you know if the John Birch Society was in existence at that time?

A It was.

Q In public existence?

A One never knows how much they are in existence publicly to this day. They were founded in the summer of 1958.

Q I mean in terms of their having been out or prepared any masthead or any list of members.

A I don't understand. Do you mean an innocent could find himself unwittingly in bad company?

Q I refer to the bottom of page 2 of Exhibit K. It indicates persons later identified by the John Birch

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Society as having been members of its executive committee and so forth.

Do you know whether there had been any identification as of the time of August 30, 1959 that any of these people were members of the John Birch Society?

MR. BLASBAND: By whom?

MR. MAHONEY: Any public identification by the John Birch Society or anyone else.

A I don't think that when fronts are set up --

Q I am not asking you about that. I am asking you whether, to your knowledge, the membership of the executive committee or the national council or any of the other governing bodies of the John Birch Society was public information as of August 30, 1959 and I address or rather invite your attention in answering that question to the footnote at the bottom of the page that says that these people were later identified by the John Birch Society as having occupied these positions.

A I don't know what the question is.

Q The question is whether as of August 30, 1959 there had been any public announcement of the membership -- by the John Birch Society -- of its executive committee, national committee, or advisory committee.

A Not to my knowledge. I think they were a

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secret society for a time and still are.

Q In looking at this report did you read the last sentence of the footnote at the bottom of page 2 which reads: "If you have died or withdrawn from active roles and at least three, Senator Goldwater and National Review editors Bosell and Buckley have been critical of Robert Welch."

A Yes.

Q When you say that this was forwarded -- that you concluded on the basis of this document that this was a radical right organization, is there any place in Exhibit K that you can point to us where this organization was described as a radical right organization?

A I think the identification is given when it is identified as a John Birch Society front.

Q Where did it say that?

A The ad did not mention the John Birch Society which was then unknown but Welch later explained that he conceived of the committee as a Birch front.

THE COURT: Where does it say that?

THE WITNESS: Right here, sir.

THE COURT: All right.

Q You are saying because Welch conceived of it as a Birch front that is the basis of your categorizing

it as radical right?

A That would be the first and primary basis.

Q Is there any other basis?

A I don't remember what I was thinking the last time I saw this up until recently. That would have been the primary basis.

Q There is no other basis that you know of at this time, in any event?

A I don't remember what six or seven years ago I may have been thinking.

Q We have referred to Mr. Buckley being on the masthead of the American Mercury, the Committee for the Monroe Doctrine, the Committee for the 48 States, and the Committee against Summit Entanglements and the announcement that his column was going to appear in the Wanderer.

Was there anything else on the basis of which you concluded that Mr. Buckley was a fellow traveler of the radical right at the time you wrote "Wild Tongues"?

THE COURT: Did you leave our American Mercury?

MR. MAHONEY: I don't think so.

THE WITNESS: He mentioned it.

Yes, as a matter of fact, a whole body of

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material, books and pamphlets. I don t know whether you want to get into the record now the other organizationa affiliations which convinced me, or whether you want to get into the literary end of things.

Q Whatever you relied on.

MR. BLASBAND: Why don't you have that marked, Dr. Littell, if you are going to present a book. If I may, your Honor.

THE COURT: Sure.

MR. BLASBAND: This is "Danger on the Right".

(Defendants' Exhibit AC was marked for identification)

xxx

THE COURT: What is AC?

MR. BLASBAND: The book "Danger on the Right", your Honor.

Q You were going to tell us, Dr. Littell, everything that you relied on that Mr. Buckley was a fellow traveler of the radical right. I understand that you are now referring to this book?

THE COURT: Just one second.

A This is a book by Arnold Forster and Benjamin Epstein, "Danger on the Right", which is one of the major resources which I have used personally, and in my seminar, for years and I might call your attention to some salient

passages.

MR. BLASBAND: Could we have it in evidence?

THE COURT: Any objection?

MR. MAHONEY: No.

THE COURT: Defendants' Exhibit AC received.

(Defendants' Exhibit AC was received in evidence)

Q Doctor, you were going to tell us the basis on which you reached your conclusions.

A Well, here is one item, for example, on page 160 speaking of Kent Courtney's rally in Chicago. In 1959 his new party rally at Chicago featured a banquet at which Founder Welch of the Birch Society and William Buckley, editor of the National Review, a leading magazine of conservative opinion, floored the platform as main speakers.

Also taking a leading role at the rally were Birch Society national council members Tom Anderson and Revilo P. Oliver and J. Brackenlead.

Q On this subject, you are aware, of course, that Mr. Buckley over the years and many times before [illegible] attacked Robert Welch, are you not?

A I am aware that he wrote a rather substanti[illegible] disavowing himself from Robert Welch but not [illegible]

the members of the Society.

THE COURT: We have got that in evidence, haven't we?

MR. MAHONEY: Yes, your Honor.

THE COURT : It came in in a couple of stages.

MR. MAHONEY: 43, your Honor.

THE COURT: Is 43 --

MR. MAHONEY: They came in two stages, but 43 incorporates the prior exhibit.

THE COURT: This is something that came out in October 1965, right?

MR. MAHONEY: That is right.

Q Do you remember referring to Exhibit 43, the statement by Mr. Buckley after quoting a number of comments from the --

THE COURT: You haven't even asked him if he read it. Did you read this article, Exhibit 43?

THE WITNESS: Yes, I did.

MR. BLASBAND: Your Honor, the question is did he read it before he wrote the book.

Q Did you read this before you wrote the book?

A I don't think so. It was called to my attention afterwards as a correction.

THE COURT: What are you referring to on page

52, when Buckley publicly criticized Robert Welch of the John Birch Society? What is that reference?

THE WITNESS: I hadn't read that. I had heard that he had publicly criticized him. He said it in different places at different times. I think there is a column that I am familiar with on that. But I hadn't seen that full thing until more recently.

Q Referring to Plaintiff's Exhibit 19, which is the document you provided us from miscellaneous notes in the FHL Journal, as I recall your deposition -- but I don't want to characterize it, as I recall your deposition this was a compilation after the event of notes from your journal existing prior to the writing of the book on which you relied in writing the book.

Is that a correct statement of what this writing is?

A Yes, I went back through, according to his Honor's instructions, to find out what helped for to? form my mind on William Buckley.

Q So anything in Exhibit 19 would be something you had read before you wrote the book?

A Yes, right.

Q I refer you here --

THE COURT: Is it 19 in evidence?

MR. MAHONEY: Yes.

THE WITNESS: Maybe it was this form that I see for the first time.

MR. BLASBAND: 19 is not in evidence, I don't think.

MR. MAHONEY: If it isn't, I will offer 19 in evidence.

MR. BLASBAND: No objection.

THE COURT: 19 is received.

(Plaintiff's Exhibit 19 was received in evidence)

THE WITNESS: What is 19?

MR. MAHONEY: That is what we are talking about.

THE WITNESS: The point is --

THE COURT: Wait one second. 19 is receiv Can I see 19 please.

Tell me again what is Exhibit 19?

Q Dr. Littell, he is asking you.

A Exhibit 19 is my typing up of notes from my journal. I have kept a journal for years. I put in reading notes --

THE COURT: Those are things from your journal that existed before the writing of "Wild Tongues"

right?

THE WITNESS: Yes, I didn't take the more recent, of course.

THE COURT: Are they part of the material that you relief on in writing "Wild Tongues"?

THE WITNESS: Yes, I didn't read it all, of course, but they were part of the build up which led me to a certain point.

Q I refer you to page 2 of Exhibit 19 where it is stated in the fourth item from the bottom: "In special feature N.R. 10-19-65, pages 914 following on the JBS and conservatism, no direct attack, simply expedient argument that type of extremism does cause more harm than good."

Does that cause your recollection to be refreshed as to whether you saw this in one form or another rather than the book? Maybe you saw the magazine.

A I saw that for the first time yesterday.

Q But it's a reprint.

THE COURT: Haven't we got this in another form? We have Exhibit 42.

MR. MAHONEY: That is a collection. We don't have this in another form, your Honor. This

includes three Buckley columns which were reprinted in this issue and a number of other items. That is 43. 42 is just the Buckley columns.

THE WITNESS: What it is is a reprint of the magazine.

Q Yes.

A Well, I evidently saw the magazine.

THE COURT: Just one second.

MR. MAHONEY: Yes, sir.

(Pause)

Q Do you remember reading -- and I am now quoting, your Honor, from a column by Mr. Buckley that is included in this reprint 43, the passage: "One continues to wonder how it is that the membership of the John Birch Society tolerates such paranoid and unpatriotic dribble."

THE COURT: Where are you reading from?

MR. MAHONEY: Here, your Honor, page 4.

THE COURT: I am confused. This Exhibit 43 consists of what? Is it an introduction?

MR. MAHONEY: This all appeared in the October 19, 1965 issue of National Review.

THE COURT: Just as it is?

MR. MAHONEY: Yes. Not typographically as it i

THE COURT: The text was all in there?

MR. MAHONEY: This is an exact reprint, yes.

THE COURT: Did this consist of some things that had appeared previously?

MR. MAHONEY: It was all fresh writing except for Mr. Buckley's columns which start on the third page. He had written three columns.

THE COURT: When you say there is something entitled for release August 5, 1965, that is a Buckley column?

MR. MAHONEY: That is a Buckley column. Then the initial portion here is an unsigned editorial comment representing the corporate position of the editors then Mr. Buckley's three columns reprinted from columns on the right that had appeared in the public press earlier, then an item by Frank McGuire, one of the editors, and another editor and a series of questions and answers on the John Birch Society which is an editorial effort in the magazine and then commentary solicited by National Review, the six items from a number of conservatives

MR. BLASBAND: Do you think we can have a copy of that?

MR. MAHONEY: I thought you did.

MR. BLASBAND: I don't think so.

Q Do you remember reading, and this is from the Buckley column for release August 5, 1965 or thereafter which quotes a number of positions taken by the John Birch Society and has this statement, and do you remember reading this statement: "One continues to wonder how it is that the membership of the John Birch Society tolerates such paranoid and unpatriotic dribble."

Do you remember reading that?

A I don't remember reading it as such but evidently I did.

THE COURT: You read this whole thing, did you not?

THE WITNESS: Yes, I read the magazine.

Q So far as your knowledge is concerned is this the only occasion on which Mr. Buckley has attacked Robert Welch?

A No, I think I saw at one time one of his columns also but I haven't seen it for a long time. I don't think that is the case. I think he has attacked Robert Welch several times. I remember him saying that the people in this society are very nice people in one of these columns.

Q Had you also read, and I am now referring to Plaintiff's Exhibit 37 which we identified a few moments

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ago as the Group Research report on Buckley and which you identified as a source in your treatment of Mr. Buckley, had you also read the narrative going from pages 3 to 4 of the Group Research report entitled Buckley and The John Birch Society?

A Yes.

THE COURT: Where is 37?

MR. MAHONEY: I can show you, your Honor.

THE COURT: You are referring to what?

MR. MAHONEY: Page 3, Buckley and The John Birch Society, and over to page 4.

Q I refer you to --

MR. BLASBAND: Excuse me, your Honor. I believe that the witness had been asked a broad question as to the sources Dr. Littell relied upon in writing of Mr. Buckley. I don't know if the witness has finished giving his sources yet. I doubt it.

THE COURT: I don't think he is cut off.

MR. MAHONEY: I will be sure he isn't cut off, your Honor. We just have to take this item by item as you counseled me this morning.

THE COURT: We are dealing with the John Birch Society.

MR. BLASBAND: The witness was talking about

a book, the last I heard him.

MR. MAHONEY: We will get back to the book.

Q I direct your attention to Exhibit 20, Dr. Littell, and ask if you can tell the Court what Exhibit 20 is.

A This has already been entered in?

Q I believe it has.

MR. BLASBAND: Yes.

Q I point you to --

THE COURT: I thought we had received it. Let's receive it now.

We lose and find these exhibits and now we have two exhibit 20s but it's better than none.

THE WITNESS: I think you have my copy. If I can have one of them it would be helpful.

Q I refer you to page 2 of Exhibit 20 and to the sentence in that paragraph there: "In addition to the JBS Bulletin of 1966, which, perhaps via Bundy, Buckley followed, there were name attacks on FHL in the following JBS monthly bulletins of the same", and then it lists the bulletins. It continues, "All of these served to guide fellow travelers as well as true believers, A, as to target priorities, B, as to data."

Were you aware of the --

THE COURT: I don't know where you are reading from.

MR. MAHONEY: This page right here.

THE COURT: All right. We have never had this witness identify Exhibit 20. I haven't the faintest idea what it is.

Q Would you tell the Court what Exhibit 20 is?

A Exhibit 20, your Honor, is a memorandum which I prepared at the request of the Macmillan Company after suit was instituted. It illustrates from my records what my experience had been with attacks on me by Buckley.

This is what special case means. That was simply me. Then the general case had to do with myself and especially the Institute for American Democracy of which I was national chairman.

THE COURT: When you say general case you mean -- what do you mean, they were somehow -- well, what do you mean by general case?

THE WITNESS: By general case I mean the organization was involved as well as me. Special case is simply me.

THE COURT: Were you intending to note these as attacks for which Mr. Buckley was responsible?

THE WITNESS: If you will look at the sequence --

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excuse me, one thing. I prepared it at that date and then I entered it again December 17, 1973 in the materials which I supplied pursuant to your instructions. Then the special case -- the language is -- well, special case was simply a series of attacks on me culminating in the famous exchange of discourtesies, point six and then the general case has to do with attacks which were partly on me and partly on the Institute for American Democracy which shows again a sequence culminating in the Buckley column in National Review.

THE COURT: At the top you are saying illustrations of Buckley's following radical right lead in selecting a target and data interpretation.

THE WITNESS: Yes, sir.

THE COURT: Okay.

MR. MAHONEY: Where were you reading from just then, your Honor?

THE COURT: Reading from the top of the page.

MR. MAHONEY: Okay.

Q On page 2 you say that "In addition to the JBS bulletin of 1966 which perhaps via Bundy, Buckley followed, there were name attacks on FHL in the following JBS monthly bulletins of the same period."

Were you aware at that time of the ongoing

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controversy between Mr. Buckley and Mr. Welch that had occurred over the years?

THE COURT: As of what time?

Q As of the time you wrote "Wild Tongues".

A I knew that Mr. Buckley had criticized Robert Welch.

Q What was your basis for believing that despite this criticism Mr. Buckley was following, as you put it, Robert Welch when he attacked you?

A I think the way I put it was perhaps --

Q No, you said in addition to the JBS bulletin of 1966 which perhaps via Bundy, the perhaps refers to "via Bundy" and then you go on "Buckley followed".

What was your basis for the conclusion that Buckley was following the "JBS bulletin on 1966"?

A You are not reading it the same way I do. "In addition to the JBS bulletin of 1966 which, perhaps via Bundy, Buckley followed, there were name attacks on Hill. It isn't that important but the "perhaps" is intended to cover the general question.

But let me say frankly what I thought. One is I have got on the left as well as the right a number of people who have exploded in personal animosities without any substantial ideological change.

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The second thing is even the Group Research on which I relied very generally has made mistakes and probably will make them again.

So that I was simply making the best judgment that I could at the time as to what I thought had happened. As it turned out not only was I mistaken on that but Mr. Buckley said it was somebody else who wrote the attack. But I thought he did it.

Q What attack are you talking about?

A The attack on me.

Q When did you write "Wild Tongues"?

A It was finished -- I have been trying to think since you asked the question earlier.

Q I am talking about your writing.

A The finalization of the thing came in like May of 1969.

Q You referred in going to "Danger on the Right" also to --

THE COURT: The finalization, as you put it, of "Wild Tongues" was when?

THE WITNESS: May of 1969 -- wait a minute. 1969, right. That wouldn't be off more than two or three weeks.

Q You are talking now about the final revision

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of proofs and so forth and so on in putting the book out?

A Yes.

Q You also referred to Buckley's sharing a platform with Kent Courtney. I refer you to the Group Research report dated March 22, 1966, Exhibit 37, which is in evidence, and I ask whether at the time you wrote "Wild Tongues" in 1968 you were aware of the following item which begins on the bottom right-hand side of page 2 and goes over to page 3:

"Kent Courtney, publisher of the Independent American in New Orleans and head of Conservative Society of America mailed to his supporters in New York a pamphlet attacking Candidate Lindsay and urging votes for Buckley. However, the October 6 issue of Courtney's paper denounced Buckley as "sophomoric" because he "sneers" at the militant anticommunist conservatives who believe that the threat from within is as great as the threat from without the country. Buckley replied by calling Courtney and his followers "kooks". New York Times October 27, 1965."

THE COURT: Where are you reading?

MR. MAHONEY: Exhibit 37, the bottom of page 2 over to the top of page 3, your Honor. Right here.

Q Were you familiar with that passage when you wrote "Wild Tongues"?

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A I certainly read it.

Q Is there anything else in the book "Danger on the Right" on which you relied in writing "Wild Tongues"?

A There are long pages incidentally in the way of constructive debate and discussion but I will just point up a few of the places. Not only does Buckley -- page 241, your Honor.

"Not only does Buckley link rightists generalizations, he also serves as a kind of ideological bridge between leading radical rightists and the extreme conservatist. Buckley has been quoted as calling himself a radical conservative and the self-chosen label is apt for, in fact, Buckley is one of the leading fellow travelers of the American radical right. On a number of subjects his own political thinking and the National Review's line for this sort of radical right."

THE COURT: Can I see that?

THE WITNESS: Yes, sir.

MR. MAHONEY: I don't want to waste the Court's time having the witness read the next two paragraphs into the record but I would like to direct the Court's attention to the two succeeding paragraphs. The ones that follow the one that he has read, that is, your Honor.

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THE COURT: It doesn't say anything about fascist in all this discussion. You use the word fascist in here.

THE WITNESS: But not in reference to Mr. Buckley.

THE COURT: You don't?

THE WITNESS: No, sir.

MR. MAHONEY: I direct your attention to page 60 of the book which equates the term fascist and radical right.

THE WITNESS: I heard of that yesterday and that is one of the things which I would object to. It doesn't equate them.

THE COURT: So you don't equate them?

THE WITNESS: No.

THE COURT: And you don't mean to in your book?

THE WITNESS: No, sir.

Do you want me to explain this page 60 since reference was made to it?

THE COURT: I guess we are getting a little out of order but, okay.

THE WITNESS: I heard yesterday that it was being read that way and it made me nervous but I remembered

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that I would have a chance today to explain the point.

What I am saying here very simply is that some people use the term radical right which is very loose rather than using the precise term which I regard as fascism.

As a matter of fact, when Mr. Buckley was explaining how he understood fascism and distinguished it from radical right, I agreed with the way he made the distinction.

THE COURT: All right. In other words, you feel that fascism has a precise meaning?

THE WITNESS: Yes, sir. It should have.

THE COURT: In other words, you basically agree with Mr. Buckley's definition of fascist?

THE WITNESS: Yes, I do.

THE COURT: Dr. Littell, over on page 50, which I am sure we have all read by now 10,000 times, you start out under the heading fellow traveler and in that first paragraph you talk about communist or fascist, right?

THE WITNESS: Yes, sir.

THE COURT: Just follow me.

THE WITNESS: It's a general discussion.

THE COURT: It's a general definition of

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fellow traveler.

THE WITNESS: In the political field. You can be a fellow traveler as to the Methodist Church but we are talking about politics.

THE COURT: You say the fellow traveler to the communist or fascist, and so forth.

THE WITNESS: That evokes memories of Darnell's The Authoritarian Personality which was one of the basic books in the study.

THE COURT: We come down to page 51 and you talk about VonRibbentropp.

THE WITNESS: That is right.

THE COURT: Then your statement about Buckley starts out "In American the outstanding representative of this function is William F. Buckley, Jr."

Frankly, if I were reading that, as a reader and with the background that I think is contained in earlier pages, I would read it to say that Mr. Buckley was a fellow traveler of the fascists. That is the only word -- you have not used radical right in the introductory three paragraphs. You have only used communist or fascist.

I think we can assume that a reader would know Mr. Buckley was not a fellow traveler of communism. That leaves one thing, a fellow traveler of the fascist.

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Are you telling me you didn't mean to say that?

THE WITNESS: No.

THE COURT: You did not?

THE WITNESS: Yes, I am telling you that.

THE COURT: You did not mean to say that Mr. Buckley was a fellow traveler of the fascist or fascism, is that right?

THE WITNESS: That is right.

THE CORUT: You would say that that is false, to say such a thing, would you?

THE WITNESS: I certainly wouldn't say it that way.

THE COURT: That clears up one point.

THE WITNESS: May I respond? The thing is that we here who have read this, as you say to the point of pain, have jumped right in on page 50. We have had a number of people here who have never read anything else except the pages.

THE COURT: I guarantee you I am not one of those.

THE WITNESS: I am not saying that. We have had a number of witnesses here. I think anybody who is going along would know that at this point I am comi

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to a general discussion within the political area where the primary manifestations are of extremism and communist and fascist. But I don't think if they read the whole thing they would conclude what you might conclude if you only read those two pages.

THE COURT: I am going to take a plunge, Dr. Littell, and I am going to say that reading the first 50 pages, 49 and one-quarter pages, it is even more strong than ever the interpretation as saying that Mr. Buckley is a fellow traveler of the fascists.

THE WITNESS: You mean it's not a good book?

THE COURT: We have got a misunderstanding here and maybe it's a perfectly innocent one but it's a dangerous problem.

Anyway, I won't go further. We have a problem of interpreting your book. You have explained your interpretation and I have explained my problem. I am going to assure you that I will go over the book very carefully with your interpretation in mind because this is an important point. But I want you to go over it too. I call your attention to page 2.

THE WITNESS: I made notes of several pages.

THE COURT: You start talking immediately at the first of the book about two prominent fascist

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type conspiracies, the White Citizens Council and the John Birch Society.

THE WITNESS: Right.

THE COURT: So you give content to what you are talking about as fascism in America by referring to those organizations and then you go down and refer to the Klu Klux Klan. The thing that concerns me in reading your book up to the point where you discuss Mr. Buckley is the content that you are giving to the term fascism as applied in the United States and you give it content, it seems to me, by reference to these organizations, very heavy emphasis on the John Birch Society and other things like the Klu Klux Klan and the White Citizen's Council and certain individuals.

By the time you get to page 50 you are not just talking in a little label, you have given a lot of content to those labels. It seems to me the emphasis has been on fascism. The word is used constantly.

THE WITNESS: Yes, sir.

THE COURT: I am going to tell you my problem quite frankly so you are not unaware of it. That is a digression, so let's go back to the testimony.

I guess this has to be a one-sided argument at this point. I think we have to get on. I was very

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interested in your answer, and it's very important that you did not intend to label Mr. Buckley a fellow traveler of fascism.

THE WITNESS: I don't think I have ever done it wittingly. I want to point out one other thing, if these were the last three pages of the book then it would be heavily prejurative. But they are not. That is, they are only in there going through, so to speak.

THE COURT: I get you.

MR. BLASBAND: Your Honor, if I may, your Honor apparently has formed an impression which you just related to us. Might it be appropriate since we are at this point in the trial for Dr. Littell to explain why he was not saying that Mr. Buckley was not a fellow traveler of the fascists and perhaps it might help your Honor re-read the passages.

THE COURT: Sure. It isn't a matter of perhaps it would be in. I think we better stick to questions. I asked some specific questions because I had not heard in any of the discussion of Mr. Mahoney's material really anything about fascism so I broke in.

But probably the best thing to do is to go on with Mr. Mahoney and we will develop all these subjects further.

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Okay.

Q Just following briefly on what the Court was saying to you, Dr. Littell, isn't it the case that the organization, the John Birch Society, which you describe Mr. Buckley as following in Exhibit 20 is the same organization that you describe as a fascist-type conspiracy on page 2 of your book?

A Perhaps.

Q I will leave the Court to read that language.

THE COURT: Where were we when I broke it?

MR. BLASBAND: You were reading the book, your Honor.

THE COURT: "Danger on the Right".

MR. BLASBAND: Yes, sir. I think the witness was giving examples of materials that he had read before writing his own book.

MR. MAHONEY: We are at page 241. I will go right back to that. I just want an answer to this question.

Q That is the same organization, isn't it, that you describe as a fascist-type organization? Let me quote you exactly, a fascist-type conspiracy, at page 2 of your book.

A I consider the John Birch Society a fascist

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conspiracy.

Q That is the organization, you say in the memorandum prepared after the litigation commenced, that Mr. Buckley was following, is that correct?

A No, I didn't say it. The language says -- you see, I was trying to figure out where he got the language and the emphasis which he used when he attacked me. That was my problem. He didn't answer my letter.

So it appeared to me to line out a series of attacks which had used the same language and what I got was this sequence. He has testified that he didn't draw it from the Church League of America except on another thing. He testified that he didn't draw it from the John Birch Society bulletin. He has testified that he never head of Richard Cotten although I have an organization here where he is on the board with him.

He testified that he drew from this and that. So at this point all I know is he says he didn't draw from what I had thought a possibility when I said perhaps. I don't know what a little bird told him. He got it someplace, but I don't know where he got it.

MR. MAHONEY: Your Honor, I won't ask the witness any more. I will direct the Court's attention to the construction of that sentence.

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THE COURT: What sentence are we talking about?

MR. MAHONEY: I am talking about the sentence here on Exhibit 20,right here, your Honor.

The witness construes this to mean that perhaps Buckley followed the bulletin.

THE COURT: Why is this sentence so important? This is something he made up after the litigation started. Obviously it could constitute an admission but it is ambiguous and people put commas in the wrong place. I don't think we have to belabor that.

THE WITNESS: I didn't publish it certainly.

Q Is there any passage --

THE COURT: There was an answer which I would like to have re-read. It must be back about three or four questions. It is before the colloquy. Something about he considered the John Birch Society a fascist-type conspiracy.

(Testimony read)

THE COURT: Let's take our break now.

(Recess)

THE COURT: After court today, I think you and the clerk better get together and see whether we have a package of all the exhibits and then keep them or

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try to keep them in some order. Let's see that they are complete and we only have one of each.

I think it would help me to assemble them. I either have to be able to use the original set or have a set of xerox copies. If I use the original set I always feel like I am taking it away from you. So anyway I need any exhibit you have. I need to be able to have them or have xeroxed copies. Maybe the best thing to do is just overnight get me a set of xeroxed copies of all the exhibits to date and all the exhibits you are going to introduce for the rest of the time, okay, so you are ready with plenty of copies. Will you do that?

MR. MAHONEY: Yes, your Honor.

Q Dr. Littell, is there anything else in "Danger on the Right" on which you do form your conclusions on Mr. Buckley?

A Yes. Do you want to finish reference in "Danger on the Right"?

THE COURT: That is what he is asking you.

THE WITNESS: Can I give you pages?

THE COURT: You can do what you did before, give us a highlight. Give us the page references but point out the highlight.

Can you do that?

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THE WITNESS: Yes, sir. It's rather lengthy.

THE COURT: What page are you at now?

THE WITNESS: Page 248"In October 1959, about two years before he delivered an all-out repudiation of Founder Robert Welch but not the John Birch Society. The sage of Stamford journeyed to Chicago to attend a two-day conference staged by Kent and Phoebe Courtney. The parley at which Buckley was a speaker included Welch himself and Birch Society National Council member Revilo P. Oliver, the University of Illinois classics professor who was then listed on the masthead of the National Review and has since emerged as one of the most extreme voices of the extremist Birch Society. Other Birch supporters present at Chicago included Tom Anderson, J. Bracken Lee, Meekford Evans, and Bryton Baron, and ex-state department official who has since broken with the Birchers as being too totalitarian. And there were such other luminaries of the radical right as Dan Smoot and Willis Stone."

I can read longer but I think it would be hardly edifying, sir.

Q That Kent Courtney, that book was a copyright 1964, is that correct?

A Copyright 1964.

Q Kent and Phoebe Courtney who organized this

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conference, aren't they the people whom Buckley called kooks as reported in the --

THE COURT: I remember you went through that.

THE WITNESS: I hesitate because I started to say that yesterday Mr. Buckley called them kooks but then I thought I better read straight on. Page 251, a week later when news came of the suspension of the Major General Edwin Walker for seeking allegedly improperly to indoctrinate his troops with rightist propaganda the National Review left to the defense of Walker. In June 1961, as the wave of anger about the Birch Society continued, the National Review testily complained of the denunciations "Why it's enough to make one join the John Birch Society".

Q Do you think that was a seriously intended comment?

THE COURT: I don't understand the question.

Q I am asking you whether you think that quote was a serious comment?

A I think it's what Mr. Buckley calls rhetorical mannerism, but on serious matter like that rhetorical mannerisms make me nervous, frankly.

Q Is there anything else in this book on which you relied?

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A I can select some other things to indicate highlights, so to speak, but I am under some consciousness that we can spend [spun?] this out at greatest lengths. Let me say page 255 to 57 seem to me to be terribly important in this discussion.

THE COURT: What do they deal with?

THE WITNESS: These have to do with the kinds of issues in which Mr. Buckley manages to come out in the general orbit of rightist opinion.

Q Rightist or radical rightist or fascist? Could you be precise about that? Is there anything on these pages that indicates that Mr. Buckley has radical rightist or fascist views?

A Yes, I already said that I wouldn't call him a fascist. I think it shows that he is certainly in the orbit of the radical right.

Q Is that phrase used anywhere in the pages? Do the words radical right appear in the pages 255 to 257?

MR. BLASBAND: The pages speak for themselves

A It appears throughout.

MR. BLASBAND: Objection, your Honor.

THE COURT: Let's just see. Maybe you can have a little time. Are the pages 255 to 257 dealing

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with radical right?

THE WITNESS: Yes, sir. 257, if his propaganda strength were not so useful to the radical right he would be very amusing and harmless.

THE COURT: Okay.

Q Is there anything else in this book on which you rely, doctor?

A Those are simply illustrations of the book on which I relied as one of the more important books in writing the section. It is not the only books.

Q I was to finish with this book.

MR. BLASBAND: Your Honor, I am sorry to take up the time of the Court.

MR. MAHONEY: Do you want to testify?

MR. BLASBAND: The question was whether there was anything more in the book. I guess I have to ask your Honor if he wants a complete dissertation on the book now.

THE COURT: I don't want a complete dissertation on anything. I want to know, and we all want to know, what it is that Dr. Littell relied upon for his discussion of Mr. Buckley in "Wild Tongues" or the related discussions. Maybe he relied on the whole book Maybe he can pinpoint, as I think he has done, sections

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out of that book which he relied on.

Let me ask you this: Just to assist me, in connection with Mr. Buckley did you rely on the whole book or are there passages in the book specifically dealing with Mr. Buckley that you relied on for Mr. Buckley?

THE WITNESS: The latter.

THE COURT: Let's just check that. You have given us a passage beginning at page 160. Let's make sure. Let's designate the pages you would say you relied on in that book regarding Mr. Buckley.

Can you do that?

THE WITNESS: I am not sure I can remember the pages that seven years ago I used precisely but the ones that seem to me now, checking back through a book which I have read several times that would seem to be most relevant to it and which I know I called are the ones that I have mentioned.

THE COURT: Pages 160 through what?

MR. MAHONEY: 160 and 241 and a number of pages after that.

THE COURT: I guess what I am asking is what I need to read.

THE WITNESS: Representative would be page 160.

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THE COURT: 241?

THE WITNESS: Yes, 241.

THE COURT: Then you mentioned 248, I guess some pages beginning with 248.

THE WITNESS: I read from 248, 249.

THE COURT: And 255, 257?

THE WITNESS: 251 and then --

THE COURT: 251?

THE WITNESS: Yes, 251 but that was an excerpt two or three sentences. I read two or three sentences from page 257.

THE COURT: I thought you mentioned 255 to 257.

THE WITNESS: All right.

THE COURT: Are there any other sections of the book that you want to call my attention to? That is as relating to Mr. Buckley.

THE WITNESS: Not specifically, no.

MR. MAHONEY: On one point I would like to remind your Honor that at 241 in one of the passages he read there are two succeeding paragraphs that run over to 242 that I think are important.

THE COURT: I have read those.

["Danger on the Right"]

Did you in reading this book come upon the

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passage, page 247, talking about God and man at Yale, "The book was diligently promoted by the habitues of the right all the way from the near to the far including some on the antisemetic extremist fringe. This was not, of course Buckley's fault. He is no antisemite and will have no truck with anti-Jewist bigotry."

Do you read that?

A Right. It's there.

Q Is there anything else on which you relied upon reaching the conclusion that Mr. Buckley was a fellow traveler of the radical right or fascist or whatever?

A Not the radical right or the fascist, but of the radical right. A number of books of which this is one of the most important --

Q What are the others?

A Pardon?

Q What are the others?

A The others are books which I use in my seminar regularly in advising on term papers, theses and in teaching my seminar on totalitarianism.

Q What are the names of those?

A Well, I list a number of them here, I think.

THE COURT: You are talking about a listing in the book "Wild Tongues", right?

THE WITNESS: Yes, which isn't there. Yes, it is too.

There is an annotated bibliography, a basic bibliography of which --

Q What page does it begin with?

A Beginning on page 138.

Q Which of these books discuss Mr. Buckley?

A I would have to check each out to be sure which. I haven't taught the seminar for two years now. I have a bibliography and I have books and I could check out and indicate which ones I have data on Mr. Buckley if you want. One of the most important is the Forster and Epstein certainly.

THE COURT: That is the one "Danger on the Right"?

THE WITNESS: The one we have here, right. That was more or less my good fortune, as it happened.

Do you think, sir, it would be well for me to bring in books where Mr. Buckley is used?

THE COURT: I think the question is what you relied on with respect to the characterization you gave to Mr. Buckley, the descriptions you gave about Mr. Buckley so anything that you now believe you relied on I think you should have here or describe or do the best you can.

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At least that is Mr. Mahoney's question and it's a question we are all interested in.

THE WITNESS: Yes, sir.

I had trouble, as you know, to figure out how to best get it into form. Mr. Williams wanted me to bring all the books that referred to Mr. VonRibbentropp. Now we are talking about William Buckley. I am simply saying that there are analyses of the radical right in this country several books which give a chapter or a number of pages to William F. Buckley, Jr. I can supply Friday, if you wish, those books which I have used most frequently like Forster and Epstein.

THE COURT: That would be very helpful.

MR. MAHONEY: Would you bring them in on Friday?

THE COURT: He will.

Q Aside from these books that you are going to bring Friday, is there anything else on which you relied in reaching the fellow traveler conclusion about Mr. Buckley?

A Yes, I used the notes in my own journal and I used newspaper clippings and flyers of various kinds. The most important of which I sent in a packet a month ago to counsel as backstopping material.

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Q As to the notes in your own journal, I believe you testified that you have gone through your journal and reproduced those notes as Exhibit 19? You have compiled those notes? I believe you have testified, have you not, that you went through your journal and compiled those notes as Exhibit 19, is that not correct?

A I am ready to believe it's Exhibit 19.

THE COURT: You are troubled about the number of the exhibit?

THE WITNESS : Yes, this is it.

Q That is a compilation of the notes of your journal from which you relied?

A Part of it. I never had time to go through the whole thing but those are the ones which I did have time to find.

Q Then the exhibits, the other documents on which you relied, are those the documents that you reviewed last Friday with Mr. Blasband which have been marked for identification in this case? Do you remember Friday after our pre-trial conference in Judge Griesa's chambers you went back with Mr. Blasband and you went through the documents and submitted to the Court and to us a list of those documents from your files which you wished to have marked for identification at the trial?

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MR. BLASBAND: Excuse me, we submitted the actual documents.

THE WITNESS: That is what I thought.

MR. BLASBAND: I can represent to the Court, your Honor, that we are under a time limitation because the Court did want us to get as many documents to your Honor as possible that day. I don't know if that was exhaustive with respect to Dr. Littell.

THE COURT: You are talking about a procedure that was undergone last Friday. Where do we go from there? Aren't you going to put these in? What are you going to do?

MR. MAHONEY: I am going to ask Dr. Littell to review these exhibits, either now or if he wants to, in consultation with Mr. Blasband and tell us any of the rest of the exhibits that he has given to Mr. Blasband on which he relied in saying what he said about Mr. Buckley so we can get in the record everything on which he relied.

MR. BLASBAND: If I can suggest, Dr. Littell I am sure can start putting or testifying now as to documents upon which he relied. I don't think he needs me for that.

Q Here, Dr. Littell, this is a list of all the documents that have been marked for identification at the

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deposition. I believe what happened is that both sides have gone through and Xed out documents that they deem to be not particularly useful. The ones that aren't Xed out are reproduced in this order, in the order indicated on this list and then there is a supplemental handwritten list which is a bunch of documents that you and Mr. Blasband identified last Friday. Those are documents you wanted to mark for identification for introduction in this case. What I am asking you to do is to go through this list and to tell us any document that is listed here on which you rely in reaching your fellow traveler conclusion about Mr. Buckley.

A I relied on all of them.

THE COURT: You talk about a list and the record doesn't show what the list is. It's not marked for identification. We have to keep the record clear. Let's mark that document. Let's take a list and mark it for identification.

MR. MAHONEY: Fine, your Honor.

THE COURT: Here is the list that you gave back to me. If you would like to have this back --

MR. MAHONEY: If I can see that, I think that is what we are talking about.

Let me just check that against these.

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(Pause)

MR. MAHONEY: Your Honor, this list was a list of the documents. Why don't we mark this for identification for starters.

THE COURT: All right.

(Plaintiff's Exhibit 54 was marked for identification)

xxx

MR. MAHONEY: I represent to the Court that this is a list prepared by my office, I believe, in consultation with Mr. Blasband and I offer it in evidence.

MR. BLASBAND: Let me see that.

(Pause)

MR. BLASBAND: I don't think this should go in evidence. This is not evidence of anything.

THE COURT: It may be used by the witness. This is just an organization problem.

MR. MAHONEY: I understand that.

THE COURT: We have to figure out format. You can get the witness' best memory as to all of the things he relied on for the Buckley passage and get those documents assembled and get them in evidence and then if you want you can ask questions about them.

MR. MAHONEY: Your Honor, this item, Exhibit 54 for identification lists everything that came in during

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the various depositions and after we saw you Friday in chambers we went through and crossed out those items in it which didn't appear to be appropriate to be entered in evidence. Mr. Blasband and Dr. Littell then went back and came up -- this document left off with Defendants' Exhibit D. Mr. Blasband and Dr. Littell went back and came up with Defendants' Exhibit E through V which were submitted to the Court and I think the first thing to do would be to go through this group, Defendants' E through V and ask him which of these he is relying on or relied on.

THE COURT: But I do think this: We are going to have from now until Friday. We are going to recess in 15 minutes or so. What Mr. Mahoney is asking you, and obviously it's something that I would ask or anybody would ask you, is to try to get your best memory of a complete statement of what you relief on for the passages of Mr. Buckley. And I say best memory because maybe you might forget or have lost or been unable to locate something. But at least you have to do the best you can. You have obviously furnished all or most of the documents up to this point. There may be other things that you have back home but you have got from now until Friday morning. But why don't you take a few

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minutes to question on these. I think its' terribly important between now and Friday for you gentlemen to go over this and come up with the complete root of items and have them organized by Friday, you know, literally all in one place in one pile. That is the way I want them used.

THE WITNESS: I supplied everything I want to depend on a month ago except for the question now of whether additional books should be produced.

THE COURT: That is very helpful.

Q Turning to the document marked Defendants' Exhibit E for identification, can you describe that document?

A Yes. This is an issue of Home Front which was an occasional journal. It's supposed to be a monthly but there was never money enough. It's an occasional journal of the Institute for American Democracy and this issue is March 1969.

MR. MAHONEY: I offer that in evidence, your Honor.

THE COURT: Is this one of the things that you relied on in connection with the statement about Mr. Buckley in "Wild Tongues"?

THE WITNESS: This is a reference to Mr. Bundy

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who Mr. Buckley has praised several times for his information on the churches and referred to his source of his information as me.

MR. MAHONEY: I think that mis-states the information. Mr. Buckley disavowed relying on Mr. Bundy.

THE WITNESS: On the contrary, we already went over that.

THE COURT: Excuse me. Can't you find out, number one, is this one of the things that he believes, and in what way? You have got to get it clear.

MR. MAHONEY: If I may ask the Court, do you want me to introduce these in evidence before I ask the question?

THE COURT: If there is no objection. There is no objection to E, is there?

MR. BLASBAND: No. Anything Dr. Littell says he relied upon there would be no objection to.

THE COURT: He hasn't said he relied on it yet.

(Defendants' Exhibit E was received in evidence)

MR. BLASBAND: Perhaps that question should be asked first.

THE COURT: I think it has been.

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MR. MAHONEY: I will ask the question.

Q Did you rely, Dr. Littell, on Defendants' Exhibit E in what you wrote about Mr. Buckley at pages 50 to 52 of "Wild Tongues"?

A Yes, it was one of a large number.

Q In what way?

A In the identification of Mr. Bundy and his work, which is one that Mr. Buckley has cited in attacking me. As a matter of fact, we have in evidence a document and Mr. Buckley himself discussed it in his testimony in which he referred to his use of the Church League of America's Information in his attack on me.

Q Doctor, aren't you confusing what Mr. Buckley wrote with what Mr. Rickenbacker authored by the columns in National Review?

A It may be a column in the National Review but at the time that I saw it I assumed that it was the editor and publisher doing it.

THE COURT: Let's get specific. Are you talking about the November 1968 editorial about the I.A.D.?

THE WITNESS: I gave up my copy.

THE COURT: Let's get it.

Q I show you Exhibit AA. Is this the document

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to which you have reference?

A Yes, this is the item here. That was the one which I had thought was Mr. Buckley himself but it turns out to be some staffer.

THE COURT: Don't let that go.

MR. MAHONEY: I am giving it back to him to go right there.

THE COURT: Please, for my sake, show me the connection. Take these two documents, Exhibit E and Exhibit AA and show me what the connection is that you are trying to bring out.

THE WITNESS: Exhibit E, which is right here, which is I.A.D.'s magazine --

THE COURT: We are talking about page 3?

THE WITNESS: Page 19 of Volume 3, No. 3.

THE COURT: All right.

THE WITNESS: The reference here is the Church League provides the library function for a variety of far right organizations. Bundy has a close working relationship with John Birch Society propagandists and the Carl McIntyre complex. The ties to both are easily documented in the Church League's catalog which features their output.

THE COURT: Tell me where do we go from there?

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only in this column but on other occasions --

THE COURT: This column meaning the column in Exhibit AA?

THE WITNESS: Yes, sir.

THE COURT: November 1968 National Review, right?

THE WITNESS: Right.

THE COURT: Show me the tie-in according to your view between that Exhibit E item and the National Review item.

THE WITNESS: The Review item is that the Church League of America here, as in some other of Mr. Buckley's writings is the source for his analysis of American Protestantism, American Protestant clergy and so forth. I have a whole file on the Church League of America data attacking me, my church, my bishop and other leaders of American Protestantism.

THE COURT: Let me see if I get you.

Your organization's publication listed the Church League as allied with John Birch Society, McIntyre, and so forth, right?

THE WITNESS: Yes.

THE COURT: Next you see that the National Rev

uses the Church League as a source of information in the November 1968 item? Correct?

THE WITNESS: Among others, but that is what we have documented.

THE COURT: Yes. And your conclusion is from that -- and this may be simple but just help me out -- your conclusion is what?

THE WITNESS: My conclusion is that Mr. Buckley is on cordial fraternal relations with Mr. Bundy and the Church League of America which is the major center of attack on the National Council of Churches and the ecumenical movement generally in this country.

THE COURT: Okay. Let's go to the next item.

Mr. Mahoney is trying to get together the items that you used as sources. I guess we better stick with Mr. Mahoney.

Q Before I leave Exhibit E, Dr. Littell, is Mr. Buckley or National Review mentioned anywhere in Exhibit E?

A No.

Q I next ask you to identify Exhibit F.

A You understand that is only one of many cross references.

We have to take them one at a time. That is

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the only way we can do it.

Would you describe Exhibit F to the Court.

A Exhibit F is another issue of Home Front of the Institute for Ameri Democracy. In this case May 1967, Volume 1, No. 3

MR. MAHONEY: Can we have that marked for identification.

(Defendants' Exhibit F was marked for identification)

MR. MAHONEY: I offer Defendants' Exhibit F .

MR. BLASBAND: If that is one of the documents Dr. Littell relied on I have no objection. If we can ask him that question first we would have no problem.

THE COURT: Is that one of the documents that you relied on?

THE WITNESS: I relied on it in reference to Mr. Buckley, right?

THE COURT: Yes, that is the question.

THE WITNESS: No.

THE COURT: That takes care of that.

THE WITNESS: This is simply general information on the Institute for American Democracy and what it was all about.

MR. BLASBAND: I have no objection to it being

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put in evidence. It might be helpful.

MR. MAHONEY: I will still offer it. It might be useful to the Court.

THE COURT: All right.

(Defendants' Exhibit F was received in evidence)

Q I ask you to look at Defendants' Exhibit G and tell the Court what this is.

A Exhibit G is a pamphlet -- excuse me, it's a xerox of a pamphlet and it didn't come through very well, because there are a number of pictures and so on that didn't make out, which was issued by the Institute for American Democracy when the organization took off in its public appeal early in 1966.

Q This was kind of a founding document of the organization?

A Yes, and it lists or states the purpose of the organization and it's interesting in this context in that it was shortly thereafter it began that avalanche of attack which I referred to and it lists or gives the letterhead, the board group.

MR. MAHONEY: May I have that marked for identification?

(Defendants' Exhibit G was marked for

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identification)

MR. MAHONEY: I offer that in evidence, your Honor.

THE COURT: Is this one of the things you relied on with respect to Mr. Buckley or is it something else, just general information?

THE WITNESS: It's like the previous exhibit. It tells about the launching of the I.A.D. and myself as national chairman which precipitated then this series of attacks.

Q Is it one of the documents relied on with respect to Mr. Buckley?

A No.

MR. MAHONEY: I still offer it in evidence.

MR. BLASBAND: No objection.

THE COURT: All right.

(Defendants' Exhibit G was received in evidence)

THE COURT: This document as issued included the New York Times item by Joseph Rophtus listing your committee and so forth?

THE WITNESS: Yes.

THE COURT: By the time your book came out were those people still on the Committee of the I.A.D.?

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THE WITNESS: Yes. I mean there may have been one or two --

THE COURT: But mostly is it the same?

THE WITNESS: Nobody pulled out.

THE COURT: Thank you.

Did they receive your book?

THE WITNESS: They didn't get it from me. I don't think so. They may have.

Q Doctor, I note that this pamphlet has a picture of Adolph Hitler on the cover and a statement "It can't happen here! or can it?"

What idea was that intended to get across?

A It's a recruitment or membership, financial pitch, and what it was intended to get across is that the threat from totalitarianism is a real threat even in America and we should take seriously the danger from extremists of the left which are listed and extremists from the right, also some of them listed.

Q Was it your intention to equate the extremes from the right with Adolph Hitler, the salesmen of the radical right pictured here in the next page?

A No --

MR. BLASBAND: I don't know what relevance that question has. We are talking about entirely different

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documents.

THE COURT: He said no. I think I just as soon would like to hear his explanation. What is your explanation? You said no.

THE WITNESS: No, this is a miscellaney. You have a miscellaney of people from rightists, radical right, to fascists, to Nazi, and then you have a miscellaneous people who are radical left to ultra -- I suppose there would be a fellow traveler of the left too if you looked and then communist.

Q On page 2 of this document it said, "Big money makes radical right a big business" and it has salesmen of the radical right. When you said Mr. Buckley was a fellow traveler o f the radical right, was this the general grouping to which you would have reference or the kind of grouping to which you would have reference?

A Yes, I would say that he was in the period, according to what I then wrote, in that orbit.

Q This is an orbit that includes the orbit you are pointing to here which includes the American Nazi party, the White Citizen's Council, and the Klu Klux Klan, isn't that correct?

A I thought you were pointing to the pictures here. Robert Welch, we have already established that

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in at least one case. Carl McIntyre, that is out. Fred Schwartz, clearly. Clarence Manion, they have been on several committees together. H.L. Hunt, I doubt it. Dan Smoot, I doubt it. General Walker, I doubt it although he defended him in National Review. George Lincoln Rockwell, he wrote the famous Dear Bill letter which was submitted to columns. Billy James Hargis, he is nothing more than Buckley's style.

THE COURT: I don't understand that.

MR. BLASBAND: There seems to be a few there --

MR. MAHONEY: Let the witness tell his own testimony.

THE WITNESS: I can list 20 others. I didn't write that thing. They are just to establish that there is a real threat in this country which I think will prove itself.

There is a connection with Mr. Buckley because the first thing that he wrote about me and I.A.D. referred specifically to that pamphlet. He took grave exception to it

MR. MAHONEY: You have to be more specific.

THE COURT: I don't know if there are any more questions on this.

MR. MAHONEY: I don't want to leave this

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dangling.

Q What writing by Mr. Buckley do you say referred to this?

A Right here. This is the document that we discussed two or three times.

THE COURT: That is Exhibit AA.

THE WITNESS: This is where the objection is made. That is the one which you say --

THE COURT: Wait a minute. The Exhibit AA, that is the November 1968 editorial criticizing the I.A.D. It says in substance that the I.A.D. appears to indulge in extremism, for instance, by publishing pamphlet that link together ordinary fundamentalists like Carl McIntyre, Billy Hargis, H.L. Hunt, and more sophistocated rightists, Fred Schwartz, Clarence Manion, Dan Smoot with John Birchers, the American Nazi Party and all under the photo of Hitler and the caption "It can't happen here or can't it".

Do you have any more questions on that Exhibit G?

MR. MAHONEY: No.

THE COURT: Is Exhibit G offered in evidence?

MR. MAHONEY: I thought it had been received.

THE COURT: All right. I think we better

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adjourn.

MR. BLASBAND: Before we adjourn perhaps we can have that long promised vision of the damage between punitive and compensatory.

THE COURT: What about the compensatory damages issue ?

MR. MAHONEY: I would say our breakdown would be something in the order of 25,000 compensatory and 75,000 punitive.

MR. BLASBAND: Thank you, your Honor.

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William F. Buckley, Jr.

v. 70 Civ. 2844

The Mac Millan Company and
Franklin H. Littell

New York, April 26, 1974
3:00 p.m.

- - -

F R A N K L I N H. L I T T E L L, resumed.

THE COURT: You are still under oath, Dr. Littell.

MR. MAHONEY: Your Honor, do you want to consdier our application regarding Mr. Alexander at this time or defer that?

THE COURT: No,you have a witness on the stand. We can cover that at the end of the day.

MR. MAHONEY: Fine.

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q Dr. Littell, when we left off we were going through some exhibits.

Referring your attention to Exhibit G, Dr. Littell --

MR. BLASBAND: Could you speak up a little, please, Mr. Mahoney?

MR. MAHONEY: Sure.

Q Referring your attention to Exhibit B, Dr. Littell

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did this document provide any basis for your conclusion that Mr. Buckley was a fellow traveler of the radical right?

A No, that is background on the institutions of American democracies, which is involved in that sense.

Q Referring you to Exhibit I, Dr. Littell, will youtell the Court what that is?

A This is a Xerox of a report from Group Research parallel to the others that we have had, under date of August 10, 1962, on Young Americans for Freedom, Inc., YAF.

MR. MAHONEY: I offer Exhibit I, your Honor.

MR. BLASBAND: No objection.

THE COURT: All right, received.

xx (Defendants' Exhibit I was received in evidence.)

Q Dr. Littell, did Exhibit I provide any basis or foundation for your conclusion that Mr. Buckley was a fellow traveler of the radical right?

A Not particularly. This was part of my information on Mr. Buckley in a general sense which I was instructed to bring forward.

I didn't know very much about Mr. Buckley and so I brought everything that I had.

Q When did you say you didn't know very much about

Mr. Buckley?

A I mean this is general information, you see, which I had as -- doesn't have -- you asked me if it had to do with my judgment that he was a fellow traveler. The answer is no, it is part of general information.

Q You also said that you didn't know very much about Mr. Buckley and I wondered if you would tell us exactly what you mean by that statement.

A Well, in the years which are under discussion, 1952 to 1968, I was not a Buckley collector like a stamp collector. He played a very incidental part in the book for my mind, although now in our perspective it seems very important, and therefore when I collected the materials I had on him, I brought in everything I had, including things which aren't necessarily related to those pages about Mr. Buckley, my instructions were to bring everything in.

Q I refer you, Doctor, to Exhibit L which has been received and ask you if that exhibit formed any part.

A Yes, this certainly formed part of my decision or my opinion, if you will, that he was a fellow traveler of the radical right, and as a matter of fact I think we used that also. That's the American Mercury issue.

Q I am referring now to Exhibit --

THE COURT: Wait a minute. L?

MR. MAHONEY: We did have prior testimony on that, your Honor.

MR. BLASBAND: Is that in evidence?

THE COURT: I don't think it is now.

MR. BLASBAND: I don't think so.

May it be offered now, your Honor?

MR. MAHONEY: I think it was offered in evidence with a page torn out.

THE COURT: All right, is this the 1933 American Mercury?

MR. MAHONEY: That is right, your Honor.

THE COURT: All right. It is already in. It is 52.

Q I refer you to Exhibit M. Can you tell us what that is, Dr. Littell?

A Yes. This is -- this is a Xerox of a report from Group Research which tells about a meeting of Liberty Lobby, a rightist organization, in which they chose a delegation as their favorite people, obviously, who were to visit President Johnson, and they included Curtis Dahl, Liberty Lobby chairman, Dan Smoot, Clarence Manion, Taylor Caldwell, famous novelist and John Birch Society writer, Phyllis S hlafly, GOP women's leader and author,

Carl McIntyre, General Edwin Walker, Paul Harvey, radio voice and right-wing speaker, Tom Anderson, CBS Council member, and William F. Buckley, editor of National Review.

THE COURT: I am not clear on what this item is. Did this Group Research issue releases? What is this thing?

THE WITNESS: Excuse me, it is Group Research prepared a -- it was what I think you would call a continuation rather than a periodical, although something was mailed every month practically, to subscribers to the service.

THE COURT: Did it have a list of subscribers?

THE WITNESS: Yes, sir.

THE COURT: This was part of something that was called a Group Research report?

THE WITNESS: Yes, my file --

THE COURT: It appeared in your file, but this is an excerpt from a Group Research report?

THE WITNESS: Yes, sir.

THE COURT: This would have been something prepared and mailed out to the subscribers, right?

THE WITNESS: Right and it was an item which again convinced me it was very popular indeed with the radical right.

THE COURT: Let me look at this for a minute. Has this got a date?

THE WITNESS: It is hard to see it in the bound copy. I was just wondering whether or not there might be a better -- a loose copy some place.

THE COURT: It obviously, it must have been while President Johnson was president, which was some time before early 1969, right?

MR. MAHONEY: Yes.

THE WITNESS: Yes, I have it sir. It is 1967, Volume 6, Group Research, No. 2, Page 5.

THE COURT: Was he Liberty Lobby?

THE WITNESS: No, Group Research. Oh; Liberty Lobby is a rightist organization, ultra rightist, and I was interested to see if Mr. Buckley also feels that way about it now.

THE COURT: I don't understand what this means and maybe you can help me.

"The Liberty Lobby contest to choose a delegation of distinguished patriots to visit President Johnson selected the follows."

Do you know what is meant by the Liberty Lobby contest?

THE WITNESS: I haven't seen what kind of a contest

it was, whether it was in a meeting or whether it was one of these flyers that they mail out, you know.

The way it formed in my mind was, knowing every one on that list in some connection or another, I would consider Mr. Buckley the most decent of the lot; but I think it is significant that he was chosen to be included with them.

MR. MAHONEY: I will offer M, your Honor.

MR. BLASBAND: No objection.

THE COURT: Yes, Exhibit M is received.

xx (Defendants' Exhibit M was received in evidence.)

Q Dr. Littell, is this a document on which you relied in forming your judgment that Mr. Buckley was a fellow traveler of the radical right?

A Yes.

Now, as I think we discussed once before, there are documents of relative merit. It is not a primary document. It is one of dozens of low level, so to speak, that form an impression.

Q After the list of names, the document says there is no occasion that any of them know of their selection and President Johnson has refused to see the group. Did you take that sentence into account in deciding how much weight to give this document?

A Not particularly because what I was seeing was the kind of people that pick Mr. Buckley -- or picked, put it that way, at that time.

Q I refer you to Exhibit , Dr. Littell, and ask you if you can tell us what that is.

A Exhibit N?

Q No.

A No, is a Xerox copy of a page from a Group Research report, Volume 6, 1966, No. 18, page 69 from an organization called Construction Action, Inc. which is identified as a radical right organization, and it lists the books which they have been distributing as representative of their point of view, which is "Up From Liberalism" by Bill Buckley. They call him Bill Buckley; I didn't.

THE COURT: Can I see that? This is apparently out of order. This is part of a Group Research report , September 30, 1966, is it not?

MR. MAHONEY: There are apparently two pages.

THE COURT: This is the exhibit.

The second page here was the front page of the report, right?

THE WITNESS: Yes.

THE COURT: All right. and it has a page 69 down the bottom. The first page of the Exhibit is 71.

Is that page 171 of that same document?

A It's the same series, the same number and volume and everything.

THE COURT: All right.

MR. MAHONEY: Have we offered N?

THE COURT: No.

MR. MAHONEY: I offer it, your Honor.

MR. BLASBAND: No objection.

xx (Defendants' Exhibit N was received in evidence.)

Q I think you testified, Dr. Littell, that this constructive action was identified as a radical right group. What identification were you referring to?

A Constructive Action, Inc., the report on that page begins, "One of the fastest growing and best heeled groups in the far right wing." That is the way it opens.

Q That is what you refer to as radical right?

A Far right, yes.

Q This document, Exhibit N, did this form a basis for your determination that Mr. Buckley was a fellow traveler of the radical right?

A Yes. well, in the context of what I said before. It's in Group D rather than Group A?

THE COURT: It's a low level document?

THE WITNESS: Right.

THE COURT: I am afraid I missed your testimony. I was trying to find this thing. Can you go over again what is the significance you attach to this?

THE WITNESS: It is the same level of significance as the fact that the Wanderer decided they liked his column and --

THE COURT: Just specifically about this item. I wasn't with you.

THE WITNESS: Teh same level. The books which are listed here are, for example, Stormer's "None Dare Call It Treason" which was exposed for its lying in the Congressional Record; and "A Choice Not An Echo", which is a little higher level.

THE COURT: Are these books that you were informed were being circulated by the Constructive Action, Inc.?

THE WITNESS: Yes.

THE COURT: That is the point of this?

THE WITNESS: That is the point.

THE COURT: And Mr. Buckley's book "Up From Liberalism" was distributed by this organization?

THE WITNESS: Right. That don't mean its content is extremist even. I am not judging the content. I am just saying that these are the kind of people who liked

his books.

THE COURT: All right.

Q Can you identify Exhibit O for us, Dr. Littell?

A This again is a Xerox of a Group Research -- a page from a Group Research report, Volume 6, 1967, No. 22, page 83 which lists the top eleven publications or public programs in the right wing in terms of the cash income which they are receiving, and they include -- this is '67. See they include the John Birch Society, McIntyre's operation, and among the others , National Review, Mannion Forum, "Christ, Man, And The Communist Crusade" and so forth.

MR. MAHONEY: I offer Exhibit O for identification received in evidence.

THE COURT: What is your understanding what those dollar figures are, the annual income or what?

A It is a report on annual income of -- well, right wing organizations, programs, and so forth in the opinion of Group Research.

I imagine the figures are accurate but opinion is something we debate about.

Q Did Exhibit O form a basis for your conclusion that Mr. Buckley was a fellow traveler of the radical right, Dr. Littell?

A No.

Q I ask you to tell us what P is, Dr. Littell.

THE COURT: What was the significance then of Exhibit O?

A Well, it would be a general indication, information as to how well what Group Research felt to be right wing were doing, and one of those was National Review but I wouldn't on the basis of a thing like that alone, you know --

THE COURT: All right.

A Exhibit P is the front page of a Group -- Xerox of the front page of a Group Research report dated December 29, 1967, and this is Volume 6, No. 24, page 1 of that number, at least.

And it is the circulation of right-wing publications, which is an annual roundup done by Group Research, and what they list here is New Guard, the Young Americans for Freedom magazine; subscriptions to Gerald L.K. Smith's monthly The Cross And The Flag, Dan Smoot report, Liberty Letter, Birch Society's American Opinion, Buckley's National Review, and The Citizen published by the White Citizens Councils. Also includes McIntyre's Christ, Man being on and so forth and it gives the circulation of each for the years.

Thatis just general information.

MR. MAHONEY: I offer Exhibit P, your Honor.

MR. BLASBAND: No objection.

xx (Defendants' Exhibit P was received in evidence.)

Q Did Exhibit P form part of a basis for your determination that Mr. Buckley was a fellow traveler for the radical right?

A That would be about Group D, I imagine.

Q Excuse me?

A Well, you'd never depend on something like that alone, but when you have dozens of them naturally you begin to wonder.

Q What makes you wonder when you see somebody who lists the circulation of National Revie ? How does that help you start to wonder?

A Well, I accept the judgment of Group Research by and large although not in every case, and when they give me a series of dollar reports and a series of subscription reports in what they call the right wing, I wouldn't accept it straight out, unless, if you have many, many blocks like that, then you begin to think well you better look into it.

THE COURT: Suppose you had taken some liberal or other kind of a paper or periodical that had a circulation of 90 to 100,000, and lots of periodicals do, so you

can make lots of lists of things with circulations of 90 to 100,000, right?

THE WITNESS: Right; I think you can draw up a list --

THE COURT: Isn't it the point that Group Research was categorizing these as right wing? I mean they were developing these as right wing?

THE WITNESS: Sure, and they grew every year.

THE COURT: So basically you were relying -- this had meaning to you because Group Research was putting together things they said were right wing, right?

THE WITNESS: Right; along with many others.

THE COURT: As against your own knowledge of these?

THE WITNESS: Yes, but it is low level information.

THE COURT: Who was doing this at Group Research?

THE WITNESS: Well, there was a staff of people. The head of the staff was Wesley McCune, who was for many years a field organizer for the National Farmers Union is one of the organizations and their former president one of the people that helped to set up the Institute for American Democracy.

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THE COURT: Was Group Research under the Institute for American Democracy?

THE WITNESS: Initially they were two fraternal organizations, but some time like three or four years ago we put them together on a common budget. There were separate offices but next door was a single budget so that it functioned as our research tool for the archives and --

THE COURT: Part of Group Research's job was to make classifications, right?

THE WITNESS: Right.

THE COURT: Who was to be included in the right and as to listings and so forth, right?

THE WITNESS: And the left wing, yes.

THE COURT: The decisions as to the classification of periodicals, would you consult with whoever was doing that at Group Research?

THE WITNESS: No, I have no -- not even an opinion ever in that. That is, it was a staff which, when we wanted to identify a person or an organization in some local situation or something, we'd ask who are they.

THE COURT: But for instance in deciding what publications to include in the annual roundup of right-wing publications, that one up to Group Research or somebody at Group Research to decide the ten or eleven right-wing

publications, right?

THE COURT: I guess you have answered but let me ask you once again. Did you consult or give any directions to Group Research as to these classifications?

THE WITNESS: No, sir. My opinion was never asked on that subject.

THE COURT: All right.

THE WITNESS: Excuse me, I think in justice to myself I should say that I have known Wesley McCune for a long time so I wasn't just shooting blind when I assumed that he knew what he was doing.

THE COURT: Who was Wesley McCune? He was the head of Group Research?

THE WITNESS: He was the director and then he had a staff of people working for him. Still has.

THE COURT: Who was he?

THE WITNESS: He was for many years a field organizer for the National Farmers Union.

THE COURT: What were his credentials for doing the kind of work he was doing?

THE WITNESS: He was a Ph.D. in the academic field and he had for many years fought practical battles, organizational battles within the farm organization. I know of one personally in Montana where he helped to clean

out two officers who were if not communists at least fellow travelers; so that I knew he was not soft in either direction, whatever his judgment might be.

THE COURT: Go ahead, Mr. Mahoney.

Q I show you Exhibit Q which has been previously admitted as Exhibit 53 so we don't have to identify that. I ask you whether this document formed part of the basis for your determination that Mr. Buckley was a fellow travele of the radical right.

MR. BLASBAND: That is Exhibit 532.

MR. MAHONEY: Yes. That's the one that--

Q Yes, you testified about that previously.

A Yes. That's another Group D thing however, it wa one of those that carried a fairly extensive attack on me and the institute, and I was interested that they liked Mr. Buckley so well.

Q What did you know about the Wanderer other than that it, like a couple of hundred other newspapers, carried Mr. Buckley's column?

A I have a file on the Wanderer.

Q I am talking about the relationship to Mr. Buckley now.

A No, no, that's like these other items. That's Group D. That is just part of a general picture.

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Q Did you know of any relationship between Mr. Buckley and the Wanderer other than that the Wanderer, like many other newspapers, carried his column?

A No; no.

Q Can you identify Exhibit R?

A Well, this is a Xerox of a page from a Group Research report, Volume 7, No. 11, page 42 , and -- yes, this is simply an announcement -- this is general information, an announcement of the starting of a news letter called Combat devoted to opposing communism has been announced by William F. Buckley, best known as an editor of the National Review and it will be edited by Theodore Lit assisted by Ruth J. Matthews, widow of the late J.B. Matthews. And Lit was assistant to the late Fulton Lewis. Then there was another item on the same page which referred to an attack on the Supreme Court as aiding communism.

Q By whom?

A This was by YAF, Young Americans for Freedom.

Q Is Mr. Buckley in any way associated with that item?

A "Is following Soviet plans for the USA," it says there. Mr. Buckley, according to the record -- I think it was in his home that YAF was founded, if I am not mistaken.

THE COURT: Let's go back to Combat. The

significance of that is what again?

THE WITNESS: It is a Group D item, low-level item again indicating Mr. Buckley's identification with two persons and one campaign, namely the attack on the Supreme Court, which have been identified with radical right activities.

THE COURT: The identification was with Ruth Matthews, widow of J.B. Matthews, right?

THE WITNESS: Right.

THE COURT: And then identification with Theodore Lit who was associated with Fulton Lewis, Jr.?

THE WITNESS: Right.

THE COURT: What was the --

THE WITNESS: J.B. Matthews was the --

THE COURT: I think we have had reference to Matthews, but I am not sure about Fulton Lewis, Jr.

THE WITNESS: Fulton Lewis, Jr. is -- was a very prominent rightist, sometomes speaker, and sometimes --

MR. MAHONEY: I will offer R, your Honor.

THE COURT: All right.

R is received.

xx (Defendants' Exhibit R was received in evidence.)

Q Did Exhibit R form a basis for your determination

that Mr. Buckley was a fellow traveler of the radical right?

A The one that we were just speaking about?

Q I am sorry.

A I said was a Group D general impression.

Q I show you Exhibit S, and ask you if you can tell me what that is.

A Yes.

I have a copy right here. Well, I can see already it says -- this is a page from home front, which is the organ of the Institute for American Democracy, December '68, page 79. I can't see what the top of it is like but I think I can see enough to tell you.

THE COURT: No objection to S?

MR. BLASBAND: I don't know if the witness was asked, your Honor, whether this was a basis for his statements about Mr. Buckley.

THE COURT: He certainly will be asked. Anyway was this a basis for your statements about Mr. Buckley?

THE WITNESS: This sheet we have now before us?

THE COURT: Right.

THE WITNESS: This had more influence than those that we have received earlier. I would rate it about Group C in that context. What it does is report

on the cooperation of Mr. Buckley of the Church League of America, and Mr. Buckley in an attack on me and on the Institute for American Democracy.

MR. BLASBAND: No objection, your Honor.

Your Honor, will we be having another recess this afternoon?

THE COURT: Sure. I guess now is a good time.

(Recess.)

MR. MAHONEY: Your Honor, one thing I'd like to make clear on the record as we proceed on this line of questioning. I phrased all these questions in terms of Mr. Buckley's being accused of being a fellow traveler of the radical right. I have done that simply to avoid an argument with the witness over each question, but it is certainly our position that he's been accused of being a fellow travler, a fascist and totalitarian movements. I don't want the form of the question to be deemed to be any sort of concession in that area.

THE COURT: All right.

DIRECT EXAMINATION (CONTINUED)

BY MR. MAHONEY:

Q We were just looking at Exhibit S and I would like your evaluation the extent to which this formed a basis for your fellow traveler conclusion about

Mr. Buckley.

A I think I said that this would be about the level of Group C although it did help me to develop some opinion of the connection between Mr. Buckley and Mr. Bundy.

THE COURT: What in there helped you develop that opinion?

THE WITNESS: Well, William F. Buckley, Jr., who praises Bundy as a foe of the National Council of Churches, for example.

THE COURT: This talks about that November '68 item, doesn't it?

THE WITNESS: December '68.

THE COURT: This talks about the December '68 item in the National Review, doesn't it?

THE WITNESS: Yes, the one which -- the second one which we have in evidence in that series.

THE COURT: Could I see that Exhibit AA? Is this all written by someone Meredith Roberts?

THE WITNESS: I think she was on the staff at that time. Yes, it is signed Meredith Roberts, the staff of the institute.

Q Referring, Dr. Littell, to Exhibit T, can you tell us what that is?

A Well, I can see that it is a Xerox of a page from Home Front, the organ of the -- of IAD. I can't see whether there is some place an indication what number would -- well, there was up in the right-hand corner but in the Xeroxing it got out of its place. Let me see if I have something that would --

Q In terms of date?

A In terms of date, to place it. I have a folder there. If I may get it, it would give us the date.

THE COURT: Certainly. Go ahead.

Q Dr. Littell, we have a loose copy here.

A So it would be Volume 2 of Home Front, 1968, No. 3, page 16. Now the content, I think that's information on Mr. Bundy and the Church League. I don't believe there is any -- I don't see any reference to -- well, there is a quotation -- no , here it is -- this is a quotation, "Major Bundy's Church League of America presents orderly protests against the social programs of the National Council of Churches. William F. Buckley, Jr.'s newspaper column, February 12, 1968."

MR. MAHONEY: I will offer it, your Honor.

MR. BLASBAND: No objection, your Honor.

THE COURT: Received.

Q Did this play any role in reaching your fellow

traveler conclusion about Mr. Buckley?

A It again established his link to Bundy and the Church League of America but it is about Group -- well, between C and D, Group D maybe.

THE COURT: D plus?

THE WITNESS: Yes, D plus. We have a lot of D pluses.

Q Do we have A's or B's, Dr. Littell?

A I have some A's and B's. You have some of them.

Q Let me refer you to Exhibit U.

Q Can you identify Exhibit U?

A Yes, this is the front page -- a Xerox copy of the front page of Home Front, the magazine of IAD, it is November 1967, and Volume 1, No. 1 -- No. 7, Page 1.

MR. MAHONEY: I will offer Exhibit U, your Honor.

MR. BLASBAND: Could we find out where on the scale it is?

MR. MAHONEY: We will get that after it is marked.

THE COURT: This is Home Front with a date?

THE WITNESS: November 1968.

THE COURT: What is the significance of this?

THE WITNESS: The significance of this is that it is the -- it is a general statement about IAD and it was all about, and my role as national chairman.

Q Does it have anything to do with your conclusion with respect to Mr. Buckley, your fellow traveler conclusion?

A Well, the connection is that the first attack by Mr. Buckley was on me and IAD and this tells us what IAD and I thought we were doing.

Q But this document, does this document provide, aside from what other connection you may see, does this document provide any part of the basis for your fellow traveler conclusion about Mr. Buckley?

A It gives no information about Mr. Buckley.

MR. MAHONEY: I will offer it, your Honor, simply because it is one of the documents he gave us.

THE COURT: Any objection?

MR. BLASBAND: No objection.

xx (Defendants' Exhibit U was received in evidence.)

Q Now Exhibit V. Can you tell us what that is?

A That is a Xerox of the first issue of Home Front, Volume 1, No. 1, February of 1967; which again is general background as to what IAD in its launching was about. There is no reference to Mr. Buckley.

Q Did it form any part of the basis for your fellow traveler conclusion about Mr. Buckley?

A No.

MR. MAHONEY: I will offer it, your Honor, just as part of what came from his file.

THE COURT: Any objection?

MR. BLASBAND: No objection.

THE COURT: Received.

xx (Defendants' Exhibit V was received in evidence.)

Q Dr. Littell, have we both today and in your previous testimony now reviewed all the documentation that you had at the time you were writing this book with respect to Mr. Buckley?

A No, I have some other items.

Q Would you tell us what they are, please?

A I brought a number of books from -- that I could dig out from my collection on extremism, and since we went into that Forster and Epstein, which was an important book in that connection, I brought two more, which I have used a good deal.

One of them --

MR. BLASBAND: Is Forster and Epstein in evidence?

THE COURT: Yes, it is. It is right here. Are these books that we can keep temporarily?

THE WITNESS: Yes, yes.

THE COURT: Go ahead.

THE WITNESS: Well, one of these --

THE COURT: Forster and Epstein book is a C.

MR. BRASBAND: Thank you, your Honor

THE WITNESS: This is a book by George Thayer.

THE COURT: What is the name of that?

THE WITNESS: Called The Farther Shores of Politics.

THE COURT: Do you mind us marking that, putting a tag on it?

THE WITNESS: No, that's quite all right.

THE COURT: Why don't we do that right now.

xx (Defendants' Exhibit AD was marked for identification.)

THE COURT: The name of the book is what?

THE WITNESS: The name of the book is"The Farther Shores of Politics ." "The American Political Fringe Today," is the subtitle.

THE COURT: Let me just get the author's name.

THE WITNESS: George Thayer.

THE COURT: When was that published?

THE WITNESS: This was published in 1967.

THE COURT: Had you read this book by the time you wrote "Wild Tongues"?

THE WITNESS: I had read in it. I don't think I had read the whole thing yet.

THE COURT: You had read parts?

THE WITNESS: Yes.

THE COURT: Go ahead, Mr. Mahoney.

Q Dr. Littell, have you ever in any of your prior depositions or in the depositions we have conducted or in the documents we have produced, have you ever up until today advised us that this is one of the sources that you relied upon in forming your conclusion about Mr. Buckley?

A No.

MR. BLASBAND: Objection, your Honor.

THE WITNESS: No, Mr. Mahoney.

MR. BLASBAND: I have an objection.

THE COURT: Mr. Blasband, what is your objection?

MR. BLASBAND: I don't know how that is relevant to anything in this lawsuit, sir.

MR. MAHONEY: Perhaps I should lay the foundation that he is relying on it, your Honor, but it is certainly relevant to credibility.

THE COURT: Yes, if there is some contradiction.

MR. BLASBAND: He just wants to know if he's been advised of this book, I guess.

THE COURT: I assume it is relevant if there was a question which called for all sources or something on that line, and there was a list of the sources and this was excluded why it would be relevant. I assume that is what you are talking about?

MR. MAHONEY: Yes, for example, in the various documentation that he has provided, there was a reference to the book ""Danger On The Right" in Exhibit 19.

THE COURT: Yes, but look, Mr. Blasband is right, just to ask him "Have you told us of this before," really doesn't mean anything in and of itself. If you are going to develop this you have to show me the request and you have to show me his response, and show that this was excluded.

THE WITNESS: May I speak, your Honor?

THE COURT: Let's see if there is a pending question but --

THE WITNESS: If I am out of order --

THE COURT: What is the last question?

(Question read.)

THE COURT: I will sustain the objection to that.

Q Dr. Littell, had you read this book or did you rely on any portion of this book at the time you wrote "Wild Tongues" to reach your fellow-traveler conclusion about Mr. Buckley?

A Well, it was part of my general literary backstopping which I have read into and which I have listed it in my bibliographies and so forth for students to read; and I don't quite understand the position, your Honor, if I --

THE COURT: Wait a minute now. Just for the present, answer. Why don't you answer questions.

THE WITNESS: I have used many more books but as I explained a long time ago, I can't bring the whole thing; so I thought we had to have all of our stuff in a month ago. I learned the last two or three days that you can bring in new things; so I thought maybe I ought to bring in a little more.

Q What do you mean by new things?

A Well, there were --

MR. BLASBAND: Objection, your Honor. I don't see why we should even have this type of dialogue.

THE WITNESS: I mean new witnesses, new papers and so forth.

Q Doctor, the pending question is whether you relied

on this book at the time you wrote "Wild Tongues."

MR. BLASBAND: Objection.

THE COURT: There is no objection to that.

MR. BLASBAND: No.

Q The pending question is whether you --

A Yes, yes, I did; and I relied on this one and I relied on a number that I can't bring because it's physically impossible.

Q Let us take this book to begin with. Is it your testimony that you relied on this book in forming your fellow traveler conclusion about Mr. Buckley at the time you wrote "Wild Tongues"?

A Yes.

Q Would you refer us to what there is in this book that helped you reach that conclusion?

A This book is one of the -- well, excuse me, there is a lot of material here on Mr. Buckley, but I refreshed my memory when I went back home yesterday, night before last, because I knew I had other stuff, and here, for example, on Page 292, "For the next four years Buckley held three jobs, one as a regular panelist for H.L. Hunt's Facts Forum," which Mr. Buckley himself referred to in his earlier discussion here, which is a very well known right-wing operation; or was at that time.

Then here's the quote which I couldn't find at the time I wanted it but -- "An editorial in the National Review" page 295, "An editorial in National Review for instance accused Linus Pauling of 'acting as a megaphone for Soviet policy' and giving 'aid and comfort to the enemies of his country'"

"Pauling sued for one million dollars but lost the case because the Court ruled that the distinguished chemist was a public figure; open to the same comment that applies to public officials".

THE COURT: What page are you reading from now?

THE WITNESS: I just turned the page to 296, from the bottom of 295 to the top of 296.

A And then another -- you know the whole thing is important but another representative sentence, "Mr. Buckley" -- no, "He (Mr. Buckley) favors the statism of Congressional investigations and the statism of right-to-work laws, for instance, but he is against the statism of civil rights laws and aid to public school."

Q Can I see that, please.

MR. BLASBAND: What page is that on, sir?

THE WITNESS: Pardon? Could you tell us the page?

MR. MAHONEY: Page 297.

MR. BLASBAND: Thank you.

Q You read us a sentence here, "For the next four years Buckley held three jobs, one as a regular panelist for H.L. Hunt's Facts Forum, another briefly at USIS, and another breifly as associate editor of American Mercury."

Did you read the next sentence, "He broke with American Mercury's editor, Roswell Maguire, when anti-semitis began to creep into thepages of the magazine"?

A No, because we have already discussed that.

Q Did you read that when you read the book?

A You mean when I just now read it?

Q No. When you were originally reading the book, did you read that passage?

A I imagine so. I have fluttered through. I can't remember everything I read at the time. I would call that a Group B reference.

MR. MAHONEY: We finally got a B.

I assume you want to offer that or I will offer it so the Court will have it.

THE COURT: Any objection.

MR. BLASBAND: No objection.

xx (Defendants' Exhibit AD was received in evidence.)

THE COURT: Do you object to that?

MR. BLASBAND: No, I don't object to it. I was wondering whether Dr. Littell was finished giving examples from it ot not.

THE WITNESS: Oh, yes, that's enough to indicate the general line of thought certainly.

Q Is there anything else that you relied on, Doctor?

A Yes. That I have with me. There is a book here about the same rating and substance by Mark Sherwin, who is a New York journalist, called "The Extremists". And this is published in 1963.

xx (Defendants' Exhibit AE was marked for identification.)

Q Dr. Littell, when did you first read this book?

A I don't know when I first read it. I have had it in my library for quite a while.

Q Since approximately when?

A I wouldn't know.

Q Did you rely on this book in what you said on the fellow traveler point about Mr. Buckley in "Wild Tongues"?

A It helped make my general judgment, yes.

Q Can you refer us to any passages in the book?

A Well, there is a chapter here on the intellectual right. The book as a whole treats all kinds of ex-

tremist organizations; but I read a few salient passages to indicate what he is -- what his judgment in the matter is. "The most revealing commentary" -- this is Page 14, starting the chapter -- "The most revealing commentary on the unifying force binding the thousand or so groups of the far right is their greatest intellectual protagonist, William F. Buckley, Jr., can define their objectives only in negative terms, and tie communism abroad and anti-statism at home."

THE COURT: Can I see that for a minute.

(Book handed to Court.)

THE COURT: That is Page 14, right?

MR. BLASBAND: Your Honor, we should have that marked for identification.

THE COURT: It is marked AE for identification. We will receive it in evidence.

xx (Defendants' Exhibit AE was received in evidence.)

A Now I will just read quickly a few things to indicate the general judgment of the writer.

"Consorting with the enemy is one of Buckley's" -- this is Page 15 -- "Consorting with the enemy is one of Buckley's favorite methods of spreading views. He takes the practical position that, when speaking before a right wing

group, he is making no new co. erts; but when he appears with James Wechsler, editor of the New York Post, or Murray Kempton, one of its columnists, or Professor Arthur Schlesinger, Jr., Special Assistant to President Kennedy, or Socialist Norman Thomas, he is drawing many liberals, who, he feels, should be exposed as often as possible to some intelligent right-wing propoganda."

Q Are you saying, Dr. Littell, that passage helped you conclude that Mr. Buckley was a fellow traveler of the totalitarian movement on the right?

A I never said he was a fellow traveler of totalitarian movements. That is the first point.

The second point is that again we are dealing with what creates over a period of a number of years and out of 250 small evidences, a feeling, and finally an opinion as to what you are dealing with.

Q Does the passage that you have just read have anything to do with Mr. Buckley associating with anybody to the right?

THE COURT: Page 14 he just read. It says that Buckley is the greatest protagonist of the thousand or so groups of the far right. That is the beginning of the chapter.

MR. MAHONEY: I am talking about what he is

reading from Page 15, your Honor.

THE COURT: It speaks for itself.

THE WITNESS: Well, this man can be wrong. It's a judgment which he has reached over obviously a number of observations.

THE COURT: Who is the author of the book?

THE WITNESS: Mark Sherwin.

THE COURT: Do you know Mark Sherwin?

THE WITNESS: I never knew Mark Sherwin.

THE COURT: Who published the book?

THE WITNESS: It was published by St. Martin's Pr which is a reputable press.

THE COURT: All right.

THE WITNESS: And he was -- he is identified -- I never knew him personally but he's taught at the New School and so forth.

MR. BLASBAND: The St. Martin's Press is an affiliate of the British McMillan Company, which is not an affiliate of the American McMillan Company but it is a prestigious publisher.

THE COURT: All right, go ahead.

I guess I interrupted you at this point.

Q Is there anything else in that document, in that book, ["The Extremists"] on which you relied in reaching your fellow traveler

conclusion about Mr. Buckley?

A Well, I think there may be other things which I haven't checked back and located again; but I didn't in the meantime recall this is one of the books I have been using all these years; and I can indicate some salient passages if it serves a useful purpose.

Q If it is anything you relied on in reaching that conclusion about Mr. Buckley I'd like you to indicate the passage.

A Well, you sound as though you think I wrote the book with a pile of books scattered around, as though I were exegeting a passage of the New Testament. I didn't. I had read some of these things again and again over the years. Some of them I had looked through like that, some of the books I have never read at all in my library, although I hope to; and -- so what I am saying is I don't think it is fair to create the impression that I was reading it you know when I wrote what I did. It was something that over a period of time built up a general opinion and judgment.

Q When you wrote "Wild Tongues," did you go back and actually research anything about Mr. Buckley, or was this just material that was in your mind?

A No, no, I had folders, as you know, and I looked through some of the items which I had there, and the rest

was mostly memory.

Q The folders, the folder on Mr. Buckley, I believe you have given us everything from that folder, and these are the exhibits we have been going through.

You have given us everything from that folder, haven't you, everything that you deem pertinent?

A Everything which I intended to use a month ago.

Q Outside of these folders, these books that you are talking about, did you look at these books at the time you were writing "Wild Tongues"? Did you consult them?

A Well, yes.

Q Like this book, for example?

A Yes. Although I didn't -- I don't think I looked at this book. I was working in what was then a beautifully setup seminar room in which there are several thousand books of which some hundreds deal with extremism, communism, nazism, church struggle in Germany, and so forth. And when I ran into a point where I'd forgotten something or I wanted to check, I'd just go get it either in folders or in the book.

Now I can't say at that point, I don't remember whether I -- in the pages which we have been spending so many days on, I don't recall whether I looked up any single thing but I did have of course in the process of writing

use books and papers and so forth; but I just want to be clear with you that I wasn't sitting there surrounded by a bunch of books; and maybe, you know, it's part of the general feel which you build up over a period of time. You depend on your memory an awful lot in a thing like that.

Q Is there anything else on which you relied?

A Do you want to -- well, do you want to have --

Q Is there any other passage in this book that you want to call to our attention?

A I might call a couple of things. Page 15, for example, "Buckley combines the right wing negative approach with a consistently defensive attitude. Conservatives in this country," he wrote, "at least those who have not made their peace with the New Deal, and there is a serious question whether there are others, non-licensed non-conformists; and this is a dangerous business in a liberal world."

Q Is there anything in here --

A And then,"'This seems to me to be the most serious judgment on the part of this writer,' Buckley charged".

THE COURT: What page?

THE WITNESS: This is Page 21. "Buckley charged

that our politics, our education, our economics, our society in general are now largely under the control of those who h betrayed the nation's first principles".

Q Dr. Littell, is there anything in here that you a going to call to our attention other than Page 14 that talks about Mr. Buckley's links of one kind or another to the far right groups as distinguished from just disagree ing with his positions?

MR. BLASBAND: Objection, your Honor.

THE COURT: Sustained.

THE WITNESS: Well, there's --

MR. BLASBAND: You don't have to answer that, Doctor. The Judge has sustained the objection.

THE WITNESS: Right.

Q Is there anything else in here on which you relie in reaching your fellow traveler conclusion about Mr. Buckley?

A On page 25, when he is rounding out this discussion, again, there are others, however this is following on a previous sentence -- well, why not put it i It would be more balanced. Bottom of Page 24, top of Page 25:

"Most of those other far right who like their solutions simply refer to Buckley as a scrambled egg head.

They suspect him as a man of too many parenthetical phrases and qualifying clauses. There are others however who are proud of the fact that the far right at least has an egg head, who is the master of the special argument, skilled at the soaring rhetoric that gives an impression of depth and the apparent intellectual sincerity that has captured the imagination of an increasing number of college men and women".

THE COURT: What significance did you attach to that as far as your conclusion about Mr. Buckley?

A I think in my writing I refered to him as a smart young intellectual. I will check it. Yes, on Page 51.

THE COURT: I think you said he was --.

A Yes, I didn't call him an egg head, even a scrambled one, but --

THE COURT: You said he got his start as a smart young intellectual?

THE WITNESS: It's part of how you look at it.

Q Dr. Littell, is there anything else that you want to call to our attention that you relied on in reaching your fellow traveler conclusion about Mr. Buckley?

A Yes. I would like to call to your attention an important article by Alan F. Westin who --

THE COURT: What is the name of the article?

THE WITNESS: The name of the article is"The John Birch Society," subtitle "Fundamentalism On The Right".

THE COURT: Date and where published.

THE WITNESS: It is a reprint from Commentary, August 1961.

THE COURT: Let's have that marked.

xx (Defendants' Exhibit AF was marked for identification.)

THE WITNESS: I think perhaps I should say this copy does not come from my library. Those things did. Although I had a copy, and it is someplace, and I distributed many sets of it, it is a reprint, but --

THE COURT: You had read it by the time you wrote "Wild Tongues", right?

THE WITNESS: Yes, yes.

THE COURT: All right.

THE WITNESS: A friend gave me this copy. This is actually -- excuse me, you are on the floor.

Q Well, would you identify that for us? I think you have identified that for us.

MR. MAHONEY: Just to start things off I will offer it, your Honor.

MR. BLASBAND: No objection, your Honor.

xx

(Defendants' Exhibit AF was received in evidence.)

Q Would you tell us what in that article was the part that helped you reach the conclusion that Mr. Buckley was a fellow traveler as you have described him in your book?

A Yes, the article itself is an attack on the John Birch Society, an analysis of it by one of our best political scientists but certainly is a very critical, hard hitting attack, and it refers to a number of the fronts including the Committee Against Summit Entanglements, I just noticed that.

But the item which seems to me to be at the level of Group D evidence among so many others, is this:

"The national campaigns are carefully pinpointed efforts. They range from letter and postcard writing to national advertising campaigns. In the past two years Birchers have been told to: Write the National Boy Scouts director and demand to know why the president of the National Council of Churches addressed our National Jamboree; insist personally and in writing each time a member flies American, United, or Eastern Airlines, that they stock Human Events and National Review on their planes."

That is the section to which I was referring.

THE COURT: May I see that? This book called "The Extremists", how would you rank that as a source? Is that high or low level or what?

THE WITNESS: I think the book "Extremists" is a little more carefully done than that-- now wait a minute, excuse me.

I think Group C would be about right.

THE COURT: All right.

THE WITNESS: Because they are good popular writings but they are not at the level of Forster and Epstein, which were done by scholars, thorough going scholars.

THE COURT: I take it you place "Danger On The Right" as high up on your point scale?

THE WITNESS: Yes, that would be one of my really and I have used it much more than I have these, as far as that's concerned.

Q Is there any other passage in this document that you want to call to our attention?

A No, I think not, unless there are requests about the JBS but --

Q Is this a document you specifically consulted at the time that you wrote the passage in "Wild Tongues" about Mr. Buckley?

A No, I think you'd have to say that's general background sort of thing.

Q I think you testified that you also had in your general background a knowledge of Mr. Buckley's comments on the Birch Society as of October 1965?

A Yes.

MR. MAHONEY: Your Honor, just to place on the record the passage from the depositions that is pertinent to these documents, Dr. Littell's last deposition --

THE COURT: What is the date?

MR. MAHONEY: December 21, 1973, page 173, there had been a colloquy about the fact that Dr. Littell didn't have all his documents with him at that deposition, all the documents on which he claimed to rely; and at Page 163 Mr. Callahan was conducting the deposition stated that he was going to seek appropriate sanctions under Rule 37 of the Federal Rules with respect to documents that haven't been produced. Then we got to go later outside of the boundaries of the deposition and we got what we thought was everything he was relying on, and this morning was the first time we were apprised that he had more.

THE WITNESS: Excuse me. I am learning here. I thought we were supposed to, all of us, have everything in a month ago and then I say that Mr. Mahoney has felt free to

introduce a lot of surprise things which --

THE COURT: Documents have different purposes, and I am not going to bar you from describing your references to these other books, so just don't worry about that.

Q Dr. Littell, is there any other documentation to which you want to refer us as a basis for your fellow traveler conclusion about Mr. Buckley?

a Yes, I have some other material here. This is a Xerox of --

THE COURT: Let's have everything marked.

xx (Defendants' Exhibit AG was marked for identification.)

THE COURT: I think that is listed somewhere, isn't it?

MR. MAHONEY: Yes, it is, your Honor. I am not quite sure. That is the article on Martin Luther King.

THE COURT: Here is Plaintiff's Exhibit 33. Is that April 10, 1968?

THE WITNESS: Yes, sir.

THE COURT: Let us get it marked plaintiff's exhibit.

MR. MAHONEY: There should be one already marked. It would only be necessary to offer 33. It

should be marked.

THE COURT: All right, 33 is received.

(Plaintiff's Exhibit 33 was received in evidence.)

Q What in this article helped you reach your fellow traveler conclusion about Mr. Buckley?

This is the same, if you want to read this.

What in this article supports your conclusion that Mr. Buckley was a fellow traveler of the radical right, of fascists or what have you?

A One of the statements which I referred to is "The streak of ideological taint and moral nihilism." on the top of page 52, and then I went on to meetings, "When Dr. Martin Luther King, Jr. was assassinated, Buckley wrote in his column a torturously reasoned explanation that the murder represented the error of an independent conscience, which was Dr. King's error too."

This seems to me to be a clear demonstration of a rightist opinion and judgment about Dr. King.

"In an Atlantic interview during his candidacy for the Yale Corporation" --

THE COURT: Wait a minute. Where are you reading from now, please?

THE WITNESS: My notes.

THE COURT: Those notes are what, Exhibit 20?

THE WITNESS: I think.

THE COURT: All right, go ahead.

THE WITNESS: Mr. Buckley called Martin Luther King, Jr. a doctor of law breaking, and then in this column, which was reprinted actually in a book called "The Jeweler's Eye," what he says in effect is that both King and his murderer -- well, I will read it --

THE COURT: I think I caused some confusion. You are reading from that. When you referred to his speech in Atlanta you were referring to those excerpts from your journals, right?

THE WITNESS: Yes, sir.

THE COURT: That is Exhibit 19?

THE WITNESS: Not Atlanta but Atlantic.

THE COURT: Atlantic.

THE WITNESS: Now, it concludes, "Dr. King's flouting of the law does not justify the flouting by others of the law, but it is" --

THE COURT: What concludes the article?

THE WITNESS: Yes.

Q You are now saying that this document formed the basis, as it clearly did, for your discussion of that exact column on page 52. Did it form any part of the

conclusion you reached with respect to Mr. Buckley being a fellow traveler?

A Well, Mr. Buckley's location, shall we say, in the political prism, it certainly did. Dr. King was a student of mine at one time, and I admired him very much; and I resented the kind of attack which was made on him as well as some other people I intend to name, and when I read this -- what should have been a decent obituary, even if you don't agree with a person politically, a statement that James Earl Ray and Martin Luther King, Jrs., consciences are morally equivalent seems to me to be nihilistic in the worse sense of the word.

THE COURT: Now let us see where is it he says.

THE WITNESS: In that thing at the end which was turned up sideways.

THE COURT: All right, go ahead.

Q Where are you referring to, the moral equivalents?

A At the end of the obituary. "Dr. King's" -- turn it up sideways.

Q I see it. I am reading it.

A "Dr. King's flouting of the law does not justify the flouting by others of the law, but it is a terrifying thought that most likely the cretin who levelled his rifle on the head of Martin Luther King may have absorbed the

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talk so freely available about the supreme ease of the individual conscience, such talk as Martin Luther King, God rest his troubled soul, had so widely and so indiscriminately made."

That is an equation of James Earl Ray's conscience and Martin Luther King's conscience.

Q We will let the passage speak for itself.

Is there any other document that you want to call to the Court's attention that form the basis for your fellow-traveler conclusion about Mr. Buckley?

A Well, I didn't go through my whole journal because it couldn't be done, but I do have some notes from my journal which we have -- you know, which I sent along a month or so ago.

Q Are these in evidence?

THE COURT: Exhibit 19.

A It is in Exhibit 19.

Q Is there anything that isn't in evidence on which you relied -- that hasn't already been put in evidence on which you relied?

A You mean this is all in evidence?

Q Yes.

A The reference to A.J. Muste and Dorothy Day as fellow travelers of the communists.

Q If it is in Exhibit 19 it is in evidence.

MR. BLASBAND: Your Honor, it may be an unfair question to ask the witness at this point.

Perhaps over the weekend the witness can go through the documents that are in evidence and see if there is anything that has been left out that hasn't been entered.

THE COURT: I really don't think it an unfair question.

MR. BLASBAND: Not in the pejorative sense.

THE COURT: Mr. Mahoney is trying to find out, the extent of your reliance.

That's all. It looks like we are towards the end.

THE WITNESS: Of what I have here, I think, yes, I would have to say -- I don't know whether your Honor wishes these materials on the Church League of America since there have been so many references to it by Mr. Buckley.

THE COURT: We are still talking about the documents or books that you -- items that you relied on in what you write about Mr. Buckley. Have we covered all those?

THE WITNESS: I think that we have. I am not -- are all of the documents, Mr. Mahoney, that are in that bound thing now in evidence? I need something --

MR. MAHONEY: That is the point Mr. Blasband

is making.

MR. BLASBAND: The witness didn't know the answer to that, Judge, and that is why I made my comment.

MR. MAHONEY: If there is anything that's been marked and not received, your Honor -- my refernece is to everything that you have turned over that we have put into that bound volume. If there is anything that ismarked but not received --

THE COURT:I assumed you were going through this.

MR. MAHONEY: I was. I think I have.

THE COURT: Andyou would go to the end. Is there anything you have not shown him?

MR. MAHONEY: No, your Honor. the later defendants' exhibits that I have here have either come in or are not pertinent to this inquiry. We went up to V and the later ones going through after V are not pertinent.

THE COURT: Where do we stand? We will adjourn in just a moment. Do you want to wrap up anything?

MR. MAHONEY: I would like to wrap upon this. After V,your Honor, you go into W which is the McGeorge Bundy thing and so forth and so on. None of that has any pertinence to this that I am aware of.

Q Dr. Littell, you have now submitted all the documentation that is relevant to what you have to say about Mr. Buckley on the ow traveler point?

A Yes.

Q At page 131 of your book you state as follows:

"Fellow traveling as to follow a line fixed by someone else in another place while pretending to integrity and independence of discussion and decision."

What in these materials led you to conclude that Mr. Buciley was a fellow traveler in that sense?

MR. BLASBAND: Excuse me, I just wish to follow your reading.

THE COURT: In what sense? Which passage are you talking about?

MR. MAHONEY: Page 131, your Honor. It is the last full sentence on page 131.

THE WITNESS: Excuse me. May I ask a question? I forgot something.

I have a number of issues which I culled from the National Review wherein you have seen syncopation with the --

THE COURT: You have to talk to them. They are all interested in this.

THE WITNESS: I mean am I out of order so that I shouldn't or if I am in order --

THE COURT: You were asked.

THE WITNESS: No. I had forgotten that I had them here.

THE COURT: Now, what is it you are saying, that there were other items that you relied on regarding Mr. Buckley? Is that what you are saying?

THE WITNESS: What I am saying is that, and I am not sure whether I am in order -- excuse me.

Q Go right ahead.

A I read from time to time the National Review, and I observed in editorials and featured articles that emphasis in the National Review coincided in a remarkable way from time to time with emphasis which I was also getting in literature from the John Birch Society, from Bundy of the Church League of America, and even from the lunatic fringe like Hargis and Mc Intyre, and so forth, so that I wouldn't want to say that my -- the basis of my judgment is entirely what we have here in these documents. It also includes a lot of reading which is in books and pamphlets and notes that are simply not here.

So you have to say, "Well, your opinion may be wrong but of course you built it up out of many things besides these papers."

Q Do you recall any specific instances from your

reading of National Review of the type you just described?

A Yes.

THE COURT: Do you have any of those issues here?

THE WITNESS: I have them noted some place, yes.

THE COURT: All right. I think we better adjourn. We have to come to the question of when to resume. I was hoping we could do it in half a day next Wednesday.

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WILLIAM F. BUCKLEY, JR.

vs. 70 Civ. 2844

THE MACMILLAN COMPANY and
FRANKLIN H. LITTELL

May 3, 1974

(Trial resumed)

F R A N K L I N H . L I T T E L L , resumed.

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q Dr. Littell, I think we covered a portion of this but not all of it before. Could you briefly tell us about your career, your education and what you have done.

A Mr. Mahoney, I think you were asking me for materials which I had in my files which had helped me to reach a judgment on that section and that is where we suspended things and I have several other materials.

THE COURT: As far as the education, if you have any specific gaps you want to fill, but please we did cover that thoroughly. Let's not start in again.

MR. BLASBAND: Your Honor, if I may, I am not so sure we covered his education. My memory is that

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it was, if anything, fairly scanty.

THE WITNESS: I have never been asked.

THE COURT: That is my mistake.

MR. BLASBAND: I would bring it out myself.

THE COURT: Where do you want to start, Mr. Mahoney?

MR. MAHONEY: We will finish this up and we will go into the educational part.

Q Do you have anything you haven't shown us on which you drew on or which at the time that you were writing "Wild Tongues" for your fellow traveler assertion of Mr. Buckley?

A Let me say again I didn't have the table with all this stuff laid out in front of me. I had it in the file and I was asked by the Court to produce what I had in the file. Some of it I have read and some of it I haven't read. There are other materials which I have read and which I haven't been able to find. But this is all part of the general background or specific material which went into what I wrote. Here is one of the general background sort which refers to what we know is a capture of a Catholic magazine by right wing interests and one of the first things they do is put Mr. Buckley up as one of their columnists.

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MR. BLASBAND: Your Honor, if this is new material, that is material that hasn't been marked and it might, just as a suggestion, be more expeditious if we can get them marked and then we would have a number for them.

THE COURT: I think we tried to do that pretty much. I don't want to adjourn now.

(Plaintiff's Exhibit 56 was marked for identification)

xxx

THE COURT: In each case just identify what these items are.

Q Would you tell us what that document is?

A Yes, this is an item from Group Research, Volume 6, No. 18, 1967 with the year, page 67. And the new column that is being added is William F. Buckley, Jr., Phyllis Schlafly and Gina Manion, who is the wife of the John Birch Society member, Clarence Manion.

THE COURT: What is the significance of this?

THE WITNESS: The significance is that in a right wing takeover of an important magazine one of the first things that he announced is --

THE COURT: What was taken over there?

THE WITNESS: This is when Eiserman was let go at Twin Circle and Father Lyons who is also publicly

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identified as a John Bircher was made editor --

THE COURT: The publication's name is what?

THE WITNESS: The publication is Twin Circle.

THE COURT: What is Twin Circle?

THE WITNESS: That is a new periodical on the right, a lay Catholic weekly published in Denver. It's bankrolled by Patrick Frawley.

THE COURT: This is Catholic weekly published in Denver and it had been taken over by -- this is going too fast for me -- but you identified with the John Birch Society?

THE WITNESS: I was referring -- scratch that. That was another thing which happened almost at the same time. This is the launching of a weekly called Twin Circle and our Sunday ~~quiz~~ was taken over at the same time, but I confused that.

THE COURT: It's the Twin Circle item that is important?

THE WITNESS: Right.

THE COURT: Twin Circle is being launched?

THE WITNESS: Right.

THE COURT: What is the next step? Is it being launched by right wing people?

THE WITNESS: Right.

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THE COURT: Who are they?

THE WITNESS: The main organizer of the enterprise is Father Daniel Lyons.

THE COURT: How do you spell Lyons?

THE WITNESS: L-y-o-n-s.

THE COURT: Who is he?

THE WITNESS: A person publicly identified as a Bircher.

Q By whom? Is it in the report there?

A No, but it's in the list of -- one of the lists I think we have already had before.

THE COURT: But your information was that Father Lyons was a Bircher?

THE WITNESS: Yes.

THE COURT: What was the connection with Mr. Buckley?

THE WITNESS: The connection is that the bankroller of this enterprise is Patrick Frawley, Jr. who has bankrolled a number of radical right affairs and this is one of these Grade C or Grade D items which helps build up a total complex.

THE COURT: And they were going to take Mr. Buckley's column?

THE WITNESS: The first announcement is they

are going to carry Buckley's column and Phyllis Slophly's column. I don't think I need to identify her any further. And also Mrs. Manion.

Q Doctor, I want to ask you one thing, you said there is a list in evidence that identifies Birch members?

A There is a list on that Committee for the 48 States or a Committee on the Monroe Doctrine, one of those we were looking at a few days ago.

Q You say that lists tells us who is a member of the John Birch Society or either of those lists?

A It indicates who on the list are members, yes, and have been publicly identified as such.

THE COURT: Many of them are the Monroe Doctrine. I guess you have to identify Phyllis Slophly for me.

THE WITNESS: Phyllis Slophly was an ultra right wing "Republican" and party member and since I was one myself I always resented that appellation, who was identified with the most extremist interests in Illinois, who was a person of the State Republican Women who got that accomplished and she came very close to accomplishing or achieving the presidency of the National Republican Women but the honest conservatives organized and defeated her.

THE COURT: Is she a member of the John Birch

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Society, to your knowledge?

THE WITNESS: Yes.

THE COURT: Do you offer 56?

MR. MAHONEY: Yes.

THE COURT: Any objection?

MR. BLASBAND: No, sir.

THE COURT: 56 is received.

(Plaintiff's Exhibit 56 was received in evidence)

MR. MAHONEY: What we are getting into, your Honor, and I don't care, is that the Friday before the trial started there was a winnowing process through that afternoon with Mr. Blasband and Dr. Littell and what we are getting is we have been winnowed, not that it makes much difference.

THE WITNESS: We are not getting winnowed.

MR. BLASBAND: In all fairness, I think you recall that the Judge asked us --

THE COURT: I am not trying to make anything of this. I think the record ought to contain any and all things that Dr. Littell relied on and anything that he does not have copies of he can describe to us. Let's just go ahead.

MR. MAHONEY: Could we mark this for

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identification?

(Plaintiff's Exhibit 57 was marked for identification)

xx

Q Could you describe Plaintiff's Exhibit 57?

A This item is a xerox of an advertising letter put out by James P. McFadden urging people to subscribe to the National Review and to buy it or give it to their friends. The relevance is that on page 2 there are a number of items indicating a heavily ideological orientation. For instance, the peace movement, who finances it, how Communists use it, why liberals help it. I don't think that is a moderate way of talking about such issues.

Q What support does it provide for your fellow traveler assertion about Mr. Buckley, if any?

A It supports the ideological sentence in which I refer to the ideological taint. A good deal of this is part of the general indication of the orientation in fellow traveling within the orbit of the radical right or the right wing.

MR. MAHONEY: I offer 57.

MR. BLASBAND: No objection.

THE COURT: How do you grade 57?

THE WITNESS: I would grade it C or D -- D in this case. But I want to make an emphasis that Mr.

Mahoney should understand too. If you have some dozens of Grade D documents you have a Grade A case.

MR. MAHONEY: We will leave that to the Court, Dr. Littell.

THE WITNESS: I am just stating my opinion.

THE COURT: I get you.

(Plaintiff's Exhibit 58 was marked for identification)

Q Would you describe 58 to us, doctor?

A This is a mimeographed program. It's an original which was sent to me from Phoenix, Arizona some years ago, I assume announcing a series of programs sponsored by the Maricopa Advisory Council which is one of the folders that I have of organizations. My friends down there, including my Methodist women, have identifed it to me as the center of radical right activity.

THE COURT: What is the name of the organization?

THE WITNESS: Maricopa.

THE COURT: What is the rest?

THE WITNESS: Advisory Council. It's called.

THE COURT: Your information is that it is what?

THE WITNESS: Right wing.

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THE COURT: Radical right?

THE WITNESS: Yes, either one.

THE COURT: What connection does it have to Buckley?

THE WITNESS: The connection is that among their programs and featured speakers we have William F. Buckley, May 11, Clarence Duncan, a well-known speaker on John Birch Society, and the Campaign to Impeach Earl Warren, May 13. On May 15 the speaker is Willis A. Carto, executive director of Liberty Lobby and so on.

THE COURT: What year are we talking about?

THE WITNESS: We are talking in this case about 1961.

MR. MAHONEY: I offer 58.

MR. BLASBAND: N o objection.

THE COURT: Received.

(Plaintiff's Exhibit 58 was received in evidence)

Q You said a moment ago when the Judge asked you was it radical right or right wing and you said "either one".

Do you use those terms interchangably?

A Pretty much, yes.

THE COURT: Right wing and radical right are

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used interchangably?

THE WITNESS: When you speak of political things you usually say right wing-left wing, something like that. I don't think it's helpful any more as a flat scale as I used to but if you are talking about radical right and radical left then you have much wider scope, culturally, theatres, movies, lots of things besides sheer political topics.

Q That last Exhibit 58, was this one of the one sent to you by Emily Brooks?

A I am not sure. It was probably. She sent me more than anybody else. But I do have several students down there who sent me things too. I am not sure.

Q Can you tell the Court who Emily Brooks is?

A Emily Brooks is now dead. She was a Methodist woman who had been all of her life very active in what was once the Ladies' Aid and then became the Women's Society of Christian Service and then became the Women's Division of the Mission Board. About 30 years ago she became fascinated by what I think of as the church struggle with fascists and communists and extremist ideology, party systems and so forth. S o she started collecting, the way some people collect postage stamps, she collected extremists. She attended meetings and

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since she was active in the women's society of my church she had other women attend the meetings and pick up programs and give her typewritten or handwritten reports on what different people said. And she collected a fantastic quantity of material on almost everything that has to do with someone speaking ill of the Methodist church or ill of the churches or ill of the preachers or ill of the National Council of Churches or someone promoting some line or issue which was obviously identified as had been identified in her mind at least as an extremists program, like impeaching Earl Warren. That is a good thing.

Whenever she saw that, she wanted to find out who put it up there and who was holding the program and so forth. So that she sent me material from time to time of something that she thought I ought to have because I was chairman of a committee set up by the bishops of our church on the problems of extremism and everybody in the denomination who paid attention to such things knew it. Then when she died she willed her whole collection to me which included a lot of books and pamphlets as well as raw material that she had picked up.

Q When was that?

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A I got her whole collection after I wrote the book. Let me think.

THE COURT: It was after the book?

THE WITNESS: Yes, I got the whole bulk of it.

Q Have you merged her collection with yours?

A Yes.

Q Do you have any way of knowing as these documents that we have been going over here in court for these last few days, do you have any way of knowing which documents are original Littell documents and which documents are Brooks documents that you didn't receive until after the book was written?

A I think there are only two or three of them.

THE COURT: He has identified the source. Most of these things came from the information, Group Research.

MR. MAHONEY: Many did, but not all of them. I am trying to find out especially since the question -- well, what he had since he wrote the book.

A I already indicated that some of the things I had I hadn't read. Some of the things that I was sure I must have read I couldn't remember having read. You are talking about six and seven years ago and to the

best of my knowledge and ability I have brought in nothing either now or two months ago when I was supposed to send in this packet or subsequently that wasn't in my possession. There is nothing subsequent to the appearance of the book because the question is what did I use to build up an attitude and to write certain things.

Q Do you have a way of knowing or recalling whether any given document is an original Littell document or something added from the Brooks collection? You know which are which?

A No. As a matter of fact, now that you remind me of it, I would be perfectly willing to say that it is possible and, therefore, maybe you better scratch that last one because I don't remember every document even earlier. All I know is that it was in my folder and it's been there presumably sometime, but I can't guarantee that it is not something that's entered the folder after I wrote it.

I can tell easily because of the dates after. When I went back through I found a whole slew of stuff that was dated after this 1968. So, of course, that is besides the point.

Q Can we have the next document?

A Right.

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MR. MAHONEY: Could we mark this for identification, please.

(Plaintiff's Exhibit 59 was marked for identification)

Q Could you describe 59 for us, please, Dr. Littell?

A Yes, this is a xerox of an issue of the National Review.

THE COURT: What date?

THE WITNESS: It's Volume 4 and the date is June 29, 1957. It's No. 1, page 5.

Q How did this help you reach your fellow traveler conclusion?

A I have several in the day off that we had. That was the first part of this week. It came to me that I was also reading from time to time in the National Review and sometimes my students in seminars would call my attention to somebody. In fact, I started to say just as we broke off last week that my attention was called to Mr. Buckley much later than I had given attention to McIntyre and Hargis and some of the real hardcore attacks on the churches.

Therefore, I started to read when they called my attention to something and I read in the National Review

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and some of my own --I made some notes which you are familiar with and I brought some xeroxes of representative items of the period. I can't swear that it was this particular item which formed my mind set on the matter, but I can swear that I spent a good many hours all in all reading into the National Review.

THE COURT: Before the time of the book?

THE WITNESS: Yes, before the time of the book.

Q Did you subscribe to the magazine?

A No.

MR. MAHONEY: Maybe we can mark this as a group.

THE WITNESS: This one has an attack on the Supreme Court.

MR. MAHONEY: We will do them individually. One is already marked.

Q Tell me about 59. How did that support your fellow traveler conclusion?

MR. BLASBAND: I don't know if he was asked what the significance of it was.

THE COURT: No, we didn't get into it at all.

THE WITNESS: This is an attack on the Supreme Court. The Court's provations, it is no longer sitting

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as a judicial bench, the Court's revolutionary use of patience and so forth and so on. I think at some place in the book I referred to the kind of criticism which undermines our institutions.

MR. MAHONEY: I offer 59.

MR. BLASBAND: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 59 was received in evidence)

Q How did --

A This is also to be marked for identification, I guess.

(Plaintiff's Exhibit 60 was marked for identification)

Q Would you describe Plaintiff's Exhibit 60 to the Court?

A This is a xerox of the first page of an article in the National Review, Volume 4, October 5, 1957, No. 13, page 301. It's one of the three late issues.

This happens to be an attack on the federal income tax by Revilo Oliver, who was for some years a member of the John Birch Society.

THE COURT: Is that a woman?

THE WITNESS: No, a professor at the Universit

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of Illinois.

THE COURT: He became a member of the John Birch Society?

THE WITNESS: He was a member of their board.

MR. MAHONEY: This is October 5, 1957, is that correct?

THE COURT: Did you say 1957 or 1967?

THE WITNESS: 1957. I have a whole series of such memories and impressions as to the kind of people that Mr. Buckley featured over the years.

Q Whose handwriting is that up there?

A That is mine.

MR. MAHONEY: I offer 60.

MR. BLASBAND: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 60 was received in evidence)

(Plaintiff's Exhibit 61 was marked for identification)

Q Can you tell us what that is, 61?

A This is a xerox of another item from the National Review. It's Volume 6 and the year is September 27, 1958, No. 9. It is a defense of Joe Kamp, a well-known antisemite.

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THE COURT: How do you spell Kamp?

THE WITNESS: K-a-m-p. And an attack on Walter Ruther and the New York Times for their effort to expose him.

THE COURT: An attack on Ruther and on the New York Times for what?

THE WITNESS: For their public exposure of Kamp's connection.

THE COURT: Who wrote the item in Exhibit 59? Is that written by Mr. Buckley or by some other author?

THE WITNESS: I don't know. It's an editoria on assignments.

THE COURT: What about the 61 item? Is that an editorial?

MR. MAHONEY: It's an editorial, your Honor.

THE COURT: Okay.

Do you offer 61?

MR. MAHONEY: Yes.

MR. BLASBAND: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 61 was received in evidence)

Q Referring to this, this was sort of a report of a controversy --

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MR. BLASBAND: Are you referring to Exhibit 61?

MR. MAHONEY: Yes.

Q This is a report of a controversy involving Walter Ruther and Mr. Kamp, is that right?

A I don't know whether we want to go into all the details of their brawl. The important part here is that it is a defense of Joe Kamp. That is my general impression.

Q What is the headline of the article?

A "Ruther proves a point" is the headline.

Q Did you read the passage "We do not happen to go for Kamp's mode of argument and have not studied his career."

Did you read that statement?

A I am not sure whether I have or not. I think that is an ironical heading.

(Plaintiff's Exhibit 62 was marked for identification)

Q Can you tell us about 62, identify that for us?

A 62 is a xerox of the first page of an article which appears in the National Review, Volume 12, June 19, 1962, No. 24, page 439.

THE COURT: What month?

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THE WITNESS: June 19, 1962.

THE COURT: Okay.

What is the significance? Is this an article or an editorial?

THE WITNESS: This is a featured article by Jack Soustelle who was later the leader of the fascist assault on the French Republic. He attempted the assination of DeGaule and the rebellion of the radical right, to put it rather loosely, of the French fascists in Algeria.

Q When was all that, what you were just describing

A The Algerian conflict was running for eight, nine, ten years.

Q But the events you are referring to all came to pass after DeGaule came to power, did they not?

A Yes.

Q When was that, if you recall?

A It must have been about --

THE COURT: Is this article about Algeria or what?

THE WITNESS: No. The point is that it is one of a whole number of articles you will find in the National Review particularly in its early years featuring persons like Oliver, like Soustelle, and so forth, who have subsequently pushed to the ultimate logic

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their extremists positions. A person who edits a magazine like that who issue after issue after issue and dozens of times in the course of a five-year period features people who later are exposed as genuine first-water fascists seems to me to indicate something about the mental operation.

Q The sub-heading of this article says that Mr. Soustelle was for two decades DeGaule's closest associate.

Do you have any reason to disbelieve that?

A No.

THE COURT: What is the title of the article?

MR. MAHONEY: "DeGaule's France on the rode to neutralism."

THE WITNESS: He was, of course. That was one of the most dramatic aspects of the effort to destroy DeGaule and the Republic.

Q Dramatic and perhaps newsworthy.

Has 62 been offered?

THE COURT: No.

MR. MAHONEY: I offer 62.

MR. BLASBAND: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 62 was received in evidence)

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THE COURT: Let me just get a note here.

What is your next document?

MR. MAHONEY: Mark this for identification.

(Plaintiff's Exhibit 63 was marked for identification)

Q Would you tell us what 63 is?

A Yes, 63 is a xerox of a January 14, 1964 issue of the National Review, pages 11 and 12.

THE COURT: What is the date?

THE WITNESS: January 14, 1964.

These are all new xeroxes, incidentally, pursuing points which I had notes on or which I hadn't in proper form. This is a xerox backing up the item to my list of observations which --

Q What is its significance?

A The significance is that it is an attack on Baird Rustin who was the head of the E. Phillips Randolph Institute in New York City, in which he, among other things, was active as recently as November 1962 in the general strike for peace program. Once he was a communist, an active member of the Young Communist League from which he resigned, he says, in June of 1941. He still belongs to organizations that serve, in the opinion of his astute observers, specifically communist causes.

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For instance, the Medical Aid to Cuba Committee. Baird Rustin is known, to organizational people, as a person who broke from the communists in 1939 and, to put it in that language he says, is obviously as assault on Baird Rustin's reputation.

MR. MAHONEY: I offer 63.

THE COURT: Any objection?

MR. BLASBAND: No, sir.

THE COURT: Recieved.

(Plaintiff's Exhibit 63 was received in evidence)

(Plaintiff's Exhibit 64 was marked for identification)

Q What is 64?

A 64 is a xerox of two pages from the National Review, June 27, 1967, pages 692 and 693. I remember this very vividly and I went back and found it. What it is is almost a cartoon done with pictures, one page in a collection bottle for leftist cripples listing Benjamin Spock, Hewlett Johnson, A.J. Muste, Bertrand Russell, Willard Uphause, Cyrus Eaton. They are pictures done in this way together.

THE COURT: Who wrote the item in Plaintiff's Exhibit 63, the attack on Baird Rustin?

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MR. MAHONEY: It's an unsigned editorial.

Q What was the significance of this document?

A The significance of this document is that it is an effort to identify as communist fellow travelers. Presumably some of them that are in there are recognizable as such. Some people are known to be other. I think of A.J. Muste particularly.

Q Is there anything there that they are trying to point --

A Whom I knew for 35 years before he died.

Q Is there anything in there that says that they are trying to portray anyone as a communist fellow traveler ?

A No, I don't think so.

Q You just deduced that from the fact that the pictures are together?

A I deduced it as a slurring way of referring to two people whom I have known, one of them a Methodist preacher and the other a Presbyterian preacher for 35 years each and both of them fine Christian gentlemen.

I suppose it's a way to avoid legal complicatio to do it in that form.

MR. MAHONEY: I move to strike the answer, your Honor.

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THE COURT: Denied.

MR. MAHONEY: I offer 64.

THE COURT: Received.

MR. BLASBAND: May I see it first, your Honor. I must advise the Court that I haven't seen these documents yet.

THE COURT: All right.

MR. BLASBAND: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 64 was received in evidence)

MR. MAHONEY: Can I have this marked?

(Plaintiff's Exhibit 65 was marked for identification)

Q Could you identify 65 for us, please?

A 65 is a xerox of a page from the National Review, June 29, 1957.

Q What is its significance?

A This item caught my eye because it has the heading "Front Bulletin", and then it is a report in which A.J. Muste, Stringfellow Barr, and Miss Dorothy Day and Conrad Lynn -- I know Muste and Dorothy Day for a long time, they are singled out to scorn. The Reverend Mr. Muste ~~lived a professional~~ "led the procession of professional communists" and so forth.

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THE COURT: Who are these people?

THE WITNESS: A.J. Muste --

THE COURT: Who are the other two?

THE WITNESS: The other one whom I have known for 35 years anyway is Miss Dorothy Day who is identified here as editor of the Anarchist Catholic Worker. She was the founder --

THE COURT: Who is the third person?

THE WITNESS: Then reference was made to Stringfellow Barr whom I know only as a former president of the St. John's College. I don't know him personally.

THE COURT: Who is A.J. Muste?

THE WITNESS: A.J. Muste was for many years, until his death -- I was overseas, it was I think about two and a half, three years ago, the executive secretary of the Fellowship for Reconciliation which was a Christian pacifist organization. He was also a Presbyterian clergyman.

THE COURT: Presbyterian?

THE WITNESS: Yes.

THE COURT: Who is Dorothy Day?

THE WITNESS: Dorothy Day is still alive. She is the founder of a House of Hospitality. She says it was founded by her friend Peter Maurin, but I think

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most of us who know her realize that she at least has been the moving power or the engine. It's a laymen apostolate in the Catholic church since about 1935 or '36. They have Houses of Hospitality.

As a matter of fact, the first House was at 115 Mott Street here within two or three blocks of us.

THE COURT: What do they do, I am not clear?

THE WITNESS: Well, a House of Hospitality takes in at not cost anyone who comes in who is hungry and they feed them soup and give them a bed and clean them up and try to get them jobs although during the depression it was pretty difficult. Now they are fairly successful in doing that.

THE COURT: Who is Stringfellow Barr?

THE WITNESS: Stringfellow Barr I don't know personally as I do or did the other two. But he was president of St. John's College at Annapolis, Maryland during a time when the great books program was put in there adopted from the University of Chicago.

THE COURT: What is the significance of this Exhibit 65?

THE WITNESS: The significance is that it's an effort to identify in a defamatory way two of the most saintly people that we have had in the churches in

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the last 75 years.

THE COURT: Meaning A.J. Muste and Dorothy Day?

THE WITNESS: Yes.

THE COURT: In what sense have they been identified in a defamatory way?

THE WITNESS: It calls them fellow travelers by implication at least -- yes, it does call them fellow travelers. Also the reference to the Community Church is typical of that kind of politics.

THE COURT: What is the Community Church? Is that in New York City?

THE WITNESS: Yes.

THE COURT: Where is that?

THE WITNESS: I am not quite sure where I am except that I am down the lower end of Manhattan.

THE COURT: Is that on Park around 35th? Is it a Uniterian church?

THE WITNESS: That is where Donald Hargeton is now the minister. I think they moved since then.

THE COURT: You say the Community Church. What does it mean to you when they say or refer to the Community Church?

THE WITNESS: The Community Church was founded,

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at least its greatest ministry for decades was John Hanes Holmes. At that time A.J. Muste was associated with it as an assistant, a younger man. The minister is now Donald Hargeton who has been there for many years. It's a famous institution. I have been there a number of times.

THE COURT: Is Hargeton one of the people in the liberal party?

THE WITNESS: I think that I have seen that he was on the liberal party.

MR. MAHONEY: He is chairman.

THE WITNESS: Is he chairman?

MR. MAHONEY: Yes.

THE WITNESS: You are acquainted with him?

MR. MAHONEY: Yes.

THE COURT: It says when finally the Reverend Mr. Muste led the procession of communists, and then there is a parenthesis, Alfred Blumburg, D. Wilkerson, and socialists to the platform -- do you know anything about Alfred Blumburg? Is this statement false that these were communists?

THE WITNESS: I don't know. I don't know Blumburg. I have heard the other name.

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to call them part of the front, am I getting your point?

THE WITNESS: Yes. But it reveals a heavy ideological slant and it reveals a hostility toward Dorothy Day and A.J. Muste in handling them so carelessly.

It's a Freudian slip.

THE COURT: What is a Freudian slip?

THE WITNESS: That is a way of sneering at the Community Church.

THE COURT: You read that to indicate that they are calling the Community Church a communist church or saying it shouldn't be called a communist church?

THE WITNESS: It says here the daily worker in a classic Freudian slip referred to it as a communist church. That is a very good way of getting it on the record without saying it yourself.

THE COURT: I am vague about Freud. You understand the Freudian slip to mean that it's a way of slipping and saying something true when you didn't intend it, is that it?

THE WITNESS: Yes, in that case.

MR. BLASBAND: May I see that one?

MR. MAHONEY: Yes.

I offer 65, your Honor.

THE COURT: Received.

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(Plaintiff's Exhibit 65 was received in evidence)

(Plaintiff's Exhibit 66 was marked for identification)

Q Can you tell us what 66 is?

A 66 is a xerox of a page in the National Review and the date is August 31, 1957 and the item to which I refer is a report concerning the stance of Dr. G. Ellison Ruff, editor of the Lutheran.

THE COURT: Is this an editorial?

THE WITNESS: This is an editorial item or a news item which is editorialized at least. It reports Dr. Ruff, whom I knew, of criticizing Lutheran's who voted for McCarthy, that is Joe McCarthy, and also criticizing specifically Representative Walter's stand on immigration as "nothing less than ungodly," and I am quoting.

Then he ends up, "So easy has it now become in Dr. Ruff's view to certify one's participation in divine grace but it is not curious that the Divine Will has ~~become~~ so often to coincide with the revelation of St. Harris."

I remembered only that.

THE COURT: What is the point? The National

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Review is taking Dr. Ruff to task for criticizing people who voted for Senator McCarthy?

THE WITNESS: Right, among other things.

THE COURT: And saying that --

THE WITNESS: And for the immigration quota.

THE COURT: What is the comparison of Marks?

THE WITNESS: Dr. Ruff is a very distinguished churchman and at the end he is saying, in effect, that his light, his leading shows a peculiar dependence upon St. Marks which is, I think, not the way one should speak in such cases, at least not seriously.

MR. MAHONEY: I offer 66.

THE COURT: Received.

(Plaintiff's Exhibit 66 was received in evidence)

MR. MAHONEY: Would you mark this.

(Plaintiff's Exhibit 67 was marked for identification)

xx

Q Can you tell us about 67?

A 67 is an item from the May 8 -- excuse me, it's a xerox of two pages from the May 8, 1962 National Review.

THE COURT: I am trying to get a note on this.

THE WITNESS: 67 is two pages, pages 317 and

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318 from the May 8, 1962 National Review.

Q What does that add as a foundation for any of the things you said in your book?

A This is an editorial which has two significances, it seems to me. One of them is that there was a whole series of editorials, articles and reports in the National Review at that time of which this is one pressing the support of the Katanga Freedomfighters so-called in Moise Tshombe and trying to get him to this country as a speaker of a big political rally and here was have again the strongest assertion of support for the Katanga politics.

The Katanga campaign was a John Birch Society campaign, among others, but very strongly.

The second thing about it is that it is an attack on Dr. Ralph Bunche who was our representative at the UN and calls him, and one or two others in the UN, mercenaries.

It says that Dr. Bunch's convulsive distortion suggests either a sick mind or else a cynical propagandistic maneuver. That was our representative.

THE COURT: Is this an editorial or what?

MR. MAHONEY: It's an editorial

Q How did you conclude that the Committee to

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THE COURT: What about D[illegible] Wilkerson?

THE WITNESS: Yes.

THE COURT: He is a communist?

THE WITNESS: She, unless I am mistaken. I shouldn't say anything s[illegible] I am not in a position to say I know for sure but I [illegible] not saying that that is a false statement.

THE COURT: The article is kind of confusing. What do you get out of it that you connect with a basis of something that you said about Mr. Buckley in this book?

THE WITNESS: Well, it is an effort to smear A.J. Muste and Dorothy Day.

THE COURT: In what way do you think it smears?

THE WITNESS: I noticed that immediately. Because for one thing it confuses the question of their pacifism with the question of their asserted fellow traveli[illegible] with a communist front.

THE COURT: You refer to the title front?

THE WITNESS: Yes. We are not talking about a pacifist front.

THE COURT: When they said this was a rally of the American Forum for Socialist Education, that you don't say is a false statement. You just say it's wrong

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Aid Katanga Freedomfighters was a John Birch operation as you just testified?

A I say it was a very strongly pressed issue in the bulletins of the John Birch Society and other literature, among others, I said. I am not saying --

Q You are not suggesting that they organized it?

A I don't know.

Q You have no information that they did?

A I couldn't prove it and I didn't say it.

THE COURT: Refresh my memory very briefly on that situation, please.

THE WITNESS: When the Katanga, that party which is now called Zaire --

THE COURT: I didn't hear you.

THE WITNESS: It has a new name now.

THE COURT: Are you talking about the old Belgian Congo?

THE WITNESS: Yes, except that it split in the process but the northern section where the copper mines are and where Belgian investments were so strong, the Belgians financed mercenary armies to come in and support a break-away effort. The break-away effort was under the leadership of Moise Tshombe.

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THE COURT: They called themselves the Katanga Freedomfighters?

THE WITNESS: They were formed in various parts of the world where they had partisans, in this case the American Committee to Support the Katanga Freedom-fighters. That is what they were called here. I suspect some of them called themselves the same thing.

THE COURT: Can I see 67? The National Review is replying to Dr Ralph Bunche who was replying [illegible]r. William Buckley who was doing what? Can you untangle this?

THE WITNESS: Yes, I can. Although I couldn't entangle my memory, I have read it again since I had it, you see. I remember it as an assault on Ralph Bunche and his integrity. The politics of the situation is that a fellow named Van denHaag was sent over to the grounds --

THE COURT: To what?

THE WITNESS: To the area to develop an informed report and bring it back on what was going on in the Congo and in the Katanga break-away and so forth.

He did bring back such a report and Ralph Bunche attacked it and --

THE COURT: It supported Tshombe or what?

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THE WITNESS: It supported the effort to establish an independent province.

THE COURT: And this was called the Katanga Reform? Was this what is called the Katanga Report of the American Committee to Aid the Katanga Freedomfighters?

THE WITNESS: I am sure that must be it.

THE COURT: He wasn't a UN person. He was sent over by this committee?

THE WITNESS: Yes.

THE COURT: He comes back and gives a report favorable to the Katanga people?

THE WITNESS: Right severely critical of the conduct of the UN troops in the Congo.

THE COURT: Did Mr. Buckley then criticize or did he support the report or what?

THE WITNESS: Sure.

THE COURT: So Bunche comes along and criticizes Buckley and the report and then the National Review criticize Bunche, right?

THE WITNESS: Yes, although I think criticizes would be a rather mild way to describe what he was trying to do.

THE COURT: Okay.

MR. MAHONEY: I offer 67.

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(Plaintiff's Exhibit 68 was marked for identification)

Q Would you tell us what significance 68 has? First identify it for us.

A 68 is a xerox of a signed editorial from Willi F. Rickenbacker in the National Review for February 27, 1962 headed "Is Kefauver a Drug Addict."

Q What is the significance of this document?

A The significance is -- I think some place in my writing I spoke of the undermining of respect for our institutions and this is a semi-scurrilous attack on Senator Kefauver at the time when he was in charge of a subcommittee investigating the drug industry.

THE COURT: Let me see that.

67 wasn't received yet.

MR. MAHONEY: I offer it.

MR. BLASBAND: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 67 was received in evidence)

xxx

THE COURT: Do you offer 68?

MR. MAHONEY: Yes.

THE COURT: Received.

What is the significance of the 68 item?

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THE WITNESS: The use of the language which was certainly disrespectful to put it mildly, of a Senator of the United States and an attack on what he is doing, accusing him of slandering the industry and the rest of it.

THE COURT: Is the term "drug addict" used in a personal sense or in a kind of speech talking about the drug investigation?

THE WITNESS: It's what Mr. Buckley would call a rhetorical mannerism. It ends with reference to Senator Estes Kefauver and his flagrant abuse of the investigative power of Congress and have all of them been, shall we say, drugged? That is the end of what is supposed to be an editorial in a responsible journal.

THE COURT: Wasn't the Kefauver committee related in part to drug traffic?

THE WITNESS: Sure. They were investigating the drug industry's prices.

THE COURT: Not illegal narcotics?

MR. MAHONEY: No, the pharmaceutical industry.

THE COURT: The drug industry?

THE WITNESS: Yes.

MR. MAHONEY: The substance of the column is that the investigation of that industry has been conducted

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unfairly.

(Plaintiff's Exhibit 68 was received in evidence)

Q What is your next item?

A I have three items that I pulled out because reference was made to them before and I was well aware of them, the general situation, which referred to the attacks on the famous Linus Pawling versus National Review situation.

This is a xerox of a page from the National Review which answers the question as to what Mr. Buckley said about Mr. Pawling. This was disputed here a few days ago.

Q This is 69?

A Yes.

MR. MAHONEY: I offer 69.

THE WITNESS: That is just information. It has nothing to do with it except I knew of the case.

THE COURT: Is this the subject of the liable suit one of them?

MR. MAHONEY: I defer to Mr. Williams who handled it.

MR. WILLIAMS: This is an article reporting that the trial was to take place. It describes the origina

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editorial, the second editorial, the bringing of the liable suit and it says that the trial will soon begin and ends up by saying that the jury will decide the matter of guilt or innocence and pass upon the judgment and has the offer responsibility concerning not only the practical matter at stake but also the issues of grave national concern."

Accordingly, he will report regularly on the progress of the trial. It was sort of a bulletin that the trial was going to begin.

THE COURT: What is the date of that?

MR. WILLIAMS: November 15, 1965.

THE WITNESS: November 2, 1965.

There were other items, of course, on that case.

MR. MAHONEY: I offer 69.

THE COURT: Received.

(Plaintiff's Exhibit 69 was received in evidence)

Q What is the next item there?

THE COURT: Do you rely on the articles about Linus Pauling that preceded this? Do you rely on them as part of the background for your comments about Mr. Buckley?

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THE WITNESS: I knew that he had misrepresented Linus Pawling. The question arose recently as to exactly what he had said and we had a document here two or three days ago which gave the quotations. They are not in there.

THE COURT: We had here a xerox of the judicial opinion and it quoted part of what had appeared in the National Review but my question to you is: Do you rely or did you rely on the National Review articles about Pawling as part of the backup?

THE WITNESS: Not in that sense.

THE COURT: Apparently there were some article about Linus Pawling and others.

THE WITNESS: I wasn't aware of the case.

THE COURT: The question is writing what you did about Mr. Buckley in "Wild Tongues" were you thinking of the situation with Linus Pawling? Is that one of the things you referred to? The question isn't clear because, of course, you didn't mention Linus Pawling.

THE WITNESS: I thought of different people whom he had assaulted in one way or another. Linus Pawlin is not one of my favorite people, needless to say. There are two things. One of them is I was aware of the case and the other is that I assumed that Mr. Buckley likes

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to knock heads. I find that his skin is more tender than I could assume.

THE COURT: I won't pursue that.

THE WITNESS: He likes to dish it out but he can't take it.

Q Do you know any occasion in which Mr. Buckley misquoted Linus Pawling?

A It seems to me there was an argument about that. I couldn't give you a quotation or something from my head because I am not that aware of it.

MR. BLASBAND: Your Honor, I wanted, if I may, to point out the second of the last paragraph to the Court of this Exhibit 69 which I think is very interesting. It's a statement by Mr. Buckley. It starts: "In this day in age", your Honor.

THE COURT: I am not with you. Where are you referring to?

MR. BLASBAND: The second to last paragraph here, your Honor, of the exhibit and within it there is a sentence that says, "In this day in age if someone can't call Pawling".

THE COURT: All right. If in this day in age the publisher may not say of Dr. Pawling that he is a fellow traveler, he cannot say it about anyone, and if a

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publisher cannot say it about anyone, he is left defenseless to identify such people..."

MR. BLASBAND: Something about stiffling.

THE COURT: The xerox seems to cut off some things.

Okay.

I think we better probably suspend.

MR. MAHONEY: This is the end of the National Review material.

THE COURT: How much more material?

THE WITNESS: This I think I can introduce directly. I don't think I have to do this on examination. I am not sure. This is the data of Fred Schwartz and the Church League of America which was for backstopping, and the Institute for American Democracy. I can introduce this myself, I think, can't I?

THE COURT: I think Mr. Mahoney wants to get it in in his examination.

Let's take that last item and maybe we can figure out some way in which we can speed this up.

MR. MAHONEY: Let's just finish the National Review items.

(Plaintiff's Exhibit 70-A and 70-B were marked for identification)

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THE COURT: What is 70-A?

Q Can you tell us what 70-A is?

A 70-A is a xerox of a page in the National Review, March 23, 1957 and the page is 275. Of course, it's all identified anyway.

THE COURT: What is 70-B?

THE WITNESS: They go together essentially. There were several others but these are part of it. 70-B is a xerox of an article in the National Review under date of March 9, 1957, page 225 and following.

THE COURT: 70-B is an article by whom?

THE WITNESS: The article is by Medford Evans, who has been identified publicly as a member of the John Birch Society. It is an article, an open letter to Dr. Oppenheimer, Robert Oppenheimer, and 70-A is an editorial attack on Harvard University because they have appointed Dr. Oppenheimer as a visiting lecturer. Oppenheimer was one of the people that were subject to continuing attacks in the magazine.

THE COURT: What is the significance of these?

THE WITNESS: As far as the general thing is concerned, the same significance is the continuing attack on Linus Pauling. But Dr. Oppenheimer is a very highly respected man in the academic community, of course, and

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I am more aware of him than Linus Pawling.

Q Had Dr. Oppenheimer's security clearance been revoked by the appropriate agencies of the federal government at this time, March 9, 1967?

A I think that that is one of the better known aspects of his career, also the national award that he subsequently received.

Q Is that all we have from National Review?

A Yes, except I have a list of certain subjects which are featured in the National Review and in the John Birch Society bulletin.

MR. MAHONEY: I am going to apply, before we leave, for an injunction against his using a xerox machine.

MR. LITTELL: You are the one who introduced stuff after I thought the cut-off had come.

MR. MAHONEY: I offer 70-A and 70-B.

Very briefly on this.--

THE COURT: Received.

Very briefly, how does anything become brief?

(Plaintiff's Exhibits 70-A and 70-B were received in evidence)

Q These articles from National Review, did you read them contemporaneously or roughly contemporaneously with their publication? Just in general now, something

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dated May 2, 1967, did you read it about when it was published?

A I think so because I never did any great research in it, then I would go back over years but if it came to my attention I am sure that somebody called it to my attention or I picked it up someplace in a barber shop or what have you.

Q So you have been reading this as you went along and forming your impression of National Review as you went along and of Mr. Buckley?

A And like the column, I didn't see it regularly but I saw it from time to time.

Q Where did you actually get the xeroxes, where physically? Do you have copies of the magazine at home?

A Yes, but I didn't get them there. I haven't been able to find them yet. The xeroxes that I brought in here are from the Temple University Library Fund and I took my journal notes and in the free time we had I went down and tracked down some things.

MR. MAHONEY: That is as good a point as any to break, your Honor.

THE COURT: I think we better break. This is educational to me to go through these items. It's tedious but it is at least helpful.

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I know that as we go along I think it's preferabl that we have a lot of stuff in the record. It's slow, as you can see. If you have got another two or three inches of material to go through, I very much hope to finish tomorrow because I don't want to keep having you come back from Philadelphia.

THE WITNESS: My wish is developing that way too. I can get through with this in three minutes as to where I am here.

THE COURT: What kind of material is it?

THE WITNESS: It's simply my own notes, itemization of topics, feature editorials, feature articles in National Review which were simultaneous with the same emphasis.

THE COURT: When did you make that list up?

THE WITNESS: I made it up sometime in recent weeks. It was from my notes and so forth.

THECOURT: These items referred to in the list, are these items that were by now put into evidence?

THE WITNESS: All I am trying to say is if you have enough, your Honor, so that you know how I got my impression and made up my mind I am finished.

THE COURT: No. You really can't rely on that because this is something that --

THE WITNESS: There is much more.

THE COURT: You better make as much of a record or let the attorneys make as much of a record as they feel they should. Obviously this is goi to take a lot of study after we have completed.

What I am trying to get at now, one of your points is that a certain article in the National Review will cover a certain subject in a way that is the same way its covered in some radical right publication and you want to show that correspondence, subject matter, and chronology, is that right?

THE WITNESS: Right.

THE COURT: The only way for me to judge that is either to have you describe it or see the actual articles. In connection with this kind of a presentation are you going to put in the articles that you refer to or are they already in? What do we still have to do is what I am trying to get at.

THE WITNESS: There are two things I am not sure of. I am not sure whether I am in true form from notes on some of the topics from my general impression and journals and so forth. Second, I don't have any more xeroxes to bring except backstopping on these organizations.

Therefore, it seems to me that I should come

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back with, at some point -- I go on in my on behalf, don't I, not responding for somebody else but on my own behalf?

THE COURT: We were thinking about having all this finished tomorrow. Also having Mr. Klagsburn on.

THE WITNESS: We have spent, it seems to me, speaking as respectfully as I know how, it seems to me we have had an awful lot of expert testimony by non-experts and sometime I should have a chance to indicate what I meant by some things and how I understand the fellow traveling.

THE COURT: No question about it.

THE WITNESS: That is constructive then and I don't believe I have to bring this in.

THE COURT: Is it worth having a session tomorrow? If we can finish I would like to have it.

MR. MAHONEY: I don't know.

THE COURT: Maybe we have to adjourn to some later date.

MR. MAHONEY: My instinct for the proceedings today makes me pesimistic about finishing tomorrow. I am perfectly available but I don't know. It could happen but I don't have a feel for how much Dr. Littell wants to put on after I am finished and he is certainly entitled

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to put on what he wants to.

THE WITNESS: If I can have half an hour I can do it. I will cut to the bone and present it.

THE COURT: What do the lawyers suggest? You know more about this than I do. We know a lot more than we did when we started.

To take two or three more days on this trial is going to be very hard for me to do until sometime in June. I am willing to work tomorrow but it it isn't going to finish it, the court reporters and everybody gets kind of discommoded to have a trial on Saturday here and it doesn't make a lot of difference to me.

MR. BLASBAND: My own feeling is that I am in somewhat of a quandry. As far as MacMillian is concerned we just don't know how much is left or what we are going to have to bring in, if anything, for our end.

On the other hand, what I was inclined to do was to have a very brief cross-examination of Dr. Littell and then sit back and say where am I, I make my motion and if it were denied then I would go one way and I would have to think about the case in setting it up. That is setting up an affirmative case in one way. If it were granted, of course, I wouldn't have that problem. I can't tell the Court how much I would have on my own case right

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now. A lot may have to come from Dr. Littell.

THE COURT: Let's not analyze in terms of whose case it is. It seems to me we are going along a path and it happens to be Mr. Mahoney's examination but he has the burden of proof and, of course, he is undertaking this. He is examining Dr. Littell on everything that Dr. Littell can remember as a basis for this passage. That is obviously crucial.

Once you get into it it is now obvious also that it is a pretty lengthy process. There are a lot of references to people and organizations and events that have to be explored, and also it's a fairly sophistoc process analyzing all this.

Mr. Mahoney is entitled to do it. And everybody else is entitled to put in anything that Mr. Mahoney hasn't.

MR. BLASBAND: Of course.

THE COURT: Of course, let's assume that Dr. Littell just finished, regardless of who examined him, he went through, it would seem to me he would want to finish showing his source and he would want to go down almost topically and say what was the basis for this, what is the basis for this, and this, and this. It would take a long time but it is necessary. Then, of course,

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Mr. Klagsburn is left, and there may be other witnesses.

MR. MAHONEY: I don't have any witness in mind other than Dr. Littell and Mr. Klagsburn. The only other witness is from California. I found out from Mr. Klagsburn that Huey left the firm and he is in California.

THE COURT: You are not going to get him?

MR. MAHONEY: No.

THE COURT: Do you have any estimate as to the total time to do the whole job? What do you suggest?

MR. BLASBAND: First I have to ask Mr. Mahoney how much time he expects to spend with Dr. Littell and Mr. Klagsburn. I want some idea of what his case will be like.

MR. MAHONEY: I think there is a substantial amount left with Dr. Littell and Klagsburn is an important examination also.

THE COURT: Would there be any utility in doing this: If we can have introduced into evidence all the remaining documents then we will adjourn. It could be an adjournment of a month. I don't like it but I don't see that I can work in another two or three days in the middle of a very tough criminal trial which starts Monday. I was boasting about working Sunday. I don't think we can. I don't think that is right. My thought

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is I ask you is there any utility in adjourning for approximately a month after having introduced into evidence without discussion all the documents, then the parties can look over the documents and analyze them and maybe we could have a conference within that time try to discuss the narrowing of the issues. I think maybe it would be a salutary thing for the lawyers to analyze this document evidence.

I doubt very much is anybody has really been able to do it before. Maybe they have but I doubt it. I think you could take the passages in the book, line these documents up in a way that has been indicated and see where we come out. For instance, the idea of a fellow traveler of the radical right, what exactly does that mean? What documents or books seem to bear that out? To what extent to they bear that out and so forth and so on. That is really a matter of analyzing the documents. Why couldn't that be done in the next month? Maybe I could have memos from the lawyers about what they considered the documents show. That has got to be done anyway.

Then come back together and really see what needs to be testified to. But we could use this time to get that document work in shape.

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MR. MAHONEY: If I can say one thing, Mr. Williams has been rebuking me for the way I have asked my questions on this question of fellow traveler and I told him it didn't make any difference and I am now proved wrong because the phrase -- I would like to say insofar as we are briefing a point, the phrase radical right never appears in this passage. The only phrase is to totalitarian movement, fascists, and in terms of fellow traveling, openly fascist journals. And he told me to keep asking questions that way and I said it wouldn't make any difference. But I don't think --

THE COURT: Look, I just appeal to all the lawyers not to oversimplify this because I think the first question is what does this passage mean and Dr. Littell has said he did not intend to call Mr. Buckley a fellow traveler of the fascist or a fellow traveler of fascism. There is a question initially.

What does it mean? Does a fair reading indicate fellow traveler of fascism, fellow traveler of radical right, fellow traveler of the John Birch Society? What does a fair reading to the kind of reader whom this would reach, what would it tell them? I don't think that is a simple question. But that is the question that is number one and then, with all respect to Mr.

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Williams, I think that the term radical right appears in these pages and in the book enough to have been dealt with. Does that documentation support Dr. Littell's assertion that Buckley is a fellow traveler of the radical right? You have to go back a step and say what is the assertion? In order to have this useful, if you are going to brief, in a way useful to me, you have to proceed on alternatives and you have got to say what is your position as to what this passage means. It means several things on several topics obviously no matter how you slice it.

Then, on this question of the political characterization, the only thing that will help me is for you to work on a couple of assumptions.

Let's assume for purposes of argument that means, or one of the meanings is that Mr. Buckley was a fellow traveler, a fascist. Then you go into the documentation. Assume that as an alternative Mr. Buckley is being called a fellow traveler of the John Birch Society. That is one serious question in light of the previous cases and what is there to support that?

Then assume that Mr. Buckley is being called merely a fellow traveler of the radical right. That is one possible interpretation at least for purposes of

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discussion. What is there that would support that?

I am just trying to get a complete layout of the meaning of this documentation.

MR. MAHONEY: The alternatives would have to include the concept of fellow traveler of the totalitarian movement.

THE COURT: Anything you want to. If you have it broken down, this is a lot of work but it's turned out that the case will take thorough analysis on these alternatives. That is the only thing that we can do about it.

I appeal to everybody not to oversimplify this because it's just going to be wasted. I think what we ought to do now is to get the rest of the documents into evidence so they can be used.

Can we do that?

MR. MAHONEY: Surely, your Honor.

I want to also, since we had just finished this discussion of the Pawling situation, I just wanted to refer the Court to another case involving Pawling and his reputation at that time, Pawling v. New Syndicate Company. Are you familiar with that, your Honor?

THE COURT: No. Do you have a xerox?

MR. MAHONEY: I have a xerox.

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THE COURT: Give Mr. Cunningham the citation.

MR. MAHONEY: I have the citation.

THE COURT: Let's go back to the testimony. Are there other documents you have here with you, Dr. Littell, which furnish background for the passages about Mr. Buckley? Do you have other documents here with you?

THE WITNESS: We are putting in everything now?

THE COURT: I would like them received in evidence. We don't have the time for any more discussion. Can we get them into evidence so the lawyers can use them during the adjourned period?

MR. BLASBAND: Judge, excuse me. I think it's a good idea. I think though that since I haven't seen these documents and I don't think Mr. Mahoney has seen them, if I can suggest an alternate course.

Dr. Littell, give them to Mr. Mahoney. Mr. Mahoney, maybe you can make xerox copies, charge me, as you shall, and then Dr. Littell and I will have, and you, a chance to review them.

MR. MAHONEY: Put them in evidence.

MR. BLASBAND: I may have an objection. I don't want to make an objection at this point because I haven't seen them. I am sorry, but I don't know.

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THE COURT: I have got to have another hearing but can't you take a little time to look over those documents? If they are in evidence then they can be used for a memoranda and so forth. If they are not, they don't have any status. Why don't you try to look at these now and maybe we can go back on the record at a break in a half hour or so and see what we can put in evidence.

MR. BLASBAND: That will be fine.

THE COURT: We will resume a little later in the day about those documents.

(Recess)

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William F. Buckley, Jr.,

-vs- 70 Civ. 2344

The MacMillan Co., et al.

T.P. Griesa, D.J.

New York, New York
May 3, 1974--4:00 p.m.

[In the robing room]

THE COURT: Why don't we go ahead.

Mr. Blasband, and you may help us out, Mr. Williams have you agreed on exhibits that will be introduced at this time?

MR. BLASBAND: Yes, sir.

THE COURT: This is AG, AH, AI, and AJ.

Is that right, Mr. Williams?

MR. WILLIAMS: Yes, your Honor.

THE COURT: These will be admitted, AG, AH, AI, and AJ.

Is that right, Dr. Littell?

DR. LITTELL: Yes, sir.

THE COURT: They are marked received.

xx [Exhibits AG, AH, AI, and AJ received in Evidence]

MR. BLASBAND: Your Honor, the various exhibits constitute individual documents that have been stapled together and it might be helpful if we were to describe for

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the record how many pages on each.

THE COURT: Couldn't you do that outside?

THE CLERK: Yes.

THE COURT: That is a good idea.

What I would like to do is to ask you gentlemen to submit memos. Just repeating, I think it is unfortunate to have to adjourn the trial, but I don't think the time will be lost because the briefing that we are going to do now really has to be done anyway. We have all the documents, and so I don't think we are really going to lose any time.

MR. BLASBAND: Your Honor, if I may, I'm not sure these are going to be all the documents that will eventually be in the case.

THE COURT: Well, at least I would assume they are most of them.

MR. BLASBAND: I would hope so.

THE COURT: It seems to me if we could use this time on this very important issue of getting memoranda on the points we talked about; that is, interpretation of the passage in the light of the other parts of the book in the question of whether those passages as interpreted are or are not supported by the documents that Dr. Littell has testified about and has put into evidence.

MR. BLASBAND: Do you want us to just restrict our-

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selves to documents or to other testimony?

THE COURT: Anything in the record now. I hope this doesn't seem disjointed, but it seems to me the great bulk of the material in the books is these various items that we have talked about which I'm sure is the bulk of it.

Now, if we can get all of this material analyzed, then it would seem to me we are well along in deciding the case.

MR. BLASBAND: We have one small problem, Judge.

THE COURT: What is that?

MR. BLASBAND: Going back to the Class D and Class C documents, as Dr. Littell characterized them, it seems to me they have to be pooled together in what their significance is. Dr. Littell has not as yet had the chance, as I recall, to do that, but it is something that I think should be done and would take oral testimony.

THE COURT: Look, it would seem to me -- I understand Dr. Littell wants to testify about that, but you have got a whole lot of material here and it seems to me that you could make a kind of tabulation of the so-called Class D material, even before he testifies. And he has indiciated in general terms his approach.

And if he sees, for instance, Mr. Buckley referred

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to as a speaker or a committee member or even a columnist in twelve publications or organizations or committees where there are also John Birch people, you are making a deduction from that, Dr. Littell, right?

DR. LITTELL: Yes, sir.

THE COURT: There is a lot of work to be done simply to tabulate. In other words, how many times is Mr. Buckley referred to and in what context and who are the people with whom they have associated him, how many John Birchers, that kind of thing.

I could take these documents right now and I could do that kind of work, and it wouldn't be the end of the case but it would be that much work behind me, and I would appreciate it very much if the lawyers could do that and save me the trouble.

MR. BLASBAND: I understand that, Judge.

THE COURT: Why don't we use the time to get that kind of collating done, so when we come back I bet we can come back, if we do it right, I bet the further testimony will mean more.

MR. BLASBAND: Yes, your Honor.

THE COURT: Why sit around and not do anything?

Now, what I would suggest, if there is any question at all as to the kind of memorandum, I mean we can discuss

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it further, but it seems to me if the memos could be filed, say, by the 20th of May and we could have a conference at 4:30 on the 23rd, I have a feeling that another meeting would be helpful to see what issues there are and maybe discuss the remaining issues of the trial and set a time for resuming the trial.

Does anybody object to that?

MR. MAHONEY: Mr. Blasband has been together with Dr. Littell most of the time since we recessed and he said he isn't sure all the documents are in. The question really isn't what documentation is there in the universe that might conceivably support Dr. Littell, but what did he rely on?

What I am concerned about here is if we have some substantial additional documentation to come in, these memoranda are going to be -- the memoranda that you are requesting could become progressively more meaningless as the additional documentation to which reference is made becomes more substantial. So we are not new to this now and I just wonder if we can find out what additional documentation we are talking about, not pages and chapter references but just in terms of a general description.

THE COURT: Well, you know ideally this could have been produced -- this could have all been worked out at pretrial.

MR. MAHONEY: We thought it had been.

THE COURT: And I think we probably thought it had, and this was something that had been asked about, and so forth.

Now, there is another thought. The thing is I just can't conceive that there is going to be a lot more documentation. You have been working on trying to assemble this material for a long time, Dr. Littell. Now, in the last few days in light of the questions, and so forth, you have gone and brought some more material back and I'm not certainly barring you from putting it in, but there does have to come a time when we have everything you are going to rely on in so that we can begin to analyze it.

Now, is it true that there are things in addition to what you have already introduced that you would like to put in as constituting documents that you relied on? Are there additional materials?

DR. LITTELL: You will remember, your Honor, I'm learning my way a little bit and I have made notes on some points which seem to be important, and now I realize it would be better if I had them in Xerox form rather than simply notes in my own handwriting.

THE COURT: How many items?

DR. LITTELL: A dozen or fifteen single sheets.

THE COURT: And you think a dozen or fifteen single

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sheets and that would be it?

DR. LITTELL: Yes. In fact, I was ready to go without them two months ago because I thought I just can't find them, but now that I have a little time, I will.

THE COURT: What do these dozen sheets or so consist of?

DR. LITTELL: Xerox copies of material on issues showing a certain syncopation, so to speak.

THE COURT: You mean things written by Mr. Buckley and things written by others?

DR. LITTELL: In the right wing.

THE COURT: In tandem?

MR. CALLAHAN: I want to find out, your Honor, if they have already been listed on Plaintiff's Exhibit 20?

MR. MAHONEY: Or 19, the notes from the Littell journal or his memorandum.

THE COURT: I think he said that some of the things that are in the record in small excerpts, and he wants to produce the actual documents.

DR. LITTELL: Yes. And today you will remember I brought in some Xeroxes of things which are on that list because Xerox is a better way to do it.

THE COURT: I think it is better to have the complete item rather than some little excerpts from your

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journal.

MR. MAHONEY: I was under the impression, your Honor, although I haven't had a chance obviously to go back and check, I had been under the impression that by and large Dr. Littell had done that insofar as the notes that he has previously put in evidence are concerned.

If there are more, I wonder if we could have them very promptly. I think it is going to be a terrible waste of time if we have memoranda written and then the day before they are handed in we get fifteen more pages that require a reanalysis of everything.

THE COURT: That is a good point. That is what Mr. Blasband was making. I guess you are all agreed on that.

Look, couldn't we do this: We don't want to convene a session just to introduce another twelve documents. Couldn't you write a letter to Mr. Mahoney and Mr. Blasband and advise them of the following: Enclosed are the remaining documents that I intend to use at the trial as documents that I relied on, and enclose your twelve or fifteen documents, and then I think we ought to treat that as closing the subje You probably want to close as much as we do.

DR. LITTELL: I thought I was closed two months ago.

THE COURT: But, please, I think you understand now, and would you please write, and when could you do this,

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write this kind of letter and send these documents? Could you do that next week?

DR. LITTELL: This coming week, you mean?

THE COURT: Yes.

MR. MAHONEY: The week of the 6th.

THE COURT: Could you do that? If there are not many things, I would think you could dig those out and have them copied by Tuesday. Couldn't you do that?

DR. LITTELL: Your Honor, I've got to be in a court in Dayton, Ohio as an expert witness Monday and Tuesday.

THE COURT: How about Thursday?

DR. LITTELL: Thursday I have a lecture at Johns Hopkins which I don't want to give up.

THE COURT: How about Friday?

DR. LITTELL: I should be able to do the job on Friday.

THE COURT: By the end of the day Friday you shoul write Mr. Blasband and Mr. Mahoney, and let's make sure you are absolutely clear on this. You will say to them enclosed are the remaining documents I intend to use at the trial.

MR. BLASBAND: Excuse me, Judge. This is on his supporting documents, whatever he is going to use to support for statements he made in the book, because there are some other background documents by himself that aren't in evidenc

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yet. There is no reason for them to be.

THE COURT: We are talking about the subject we have been talking about for the last two days. I don't think there is any question about it.

But, in other words, it is relating to the support or the background for the material on Mr. Buckley, okay?

DR. LITTELL: Yes.

THE COURT: And then you will give the twelve or fifteen, whatever it is, and that gives Mr. Blasband and Mr. Mahoney everything and they can begin to analyze them and you can certainly go to work on the rest of the documents before next Friday. And couldn't you have your memo to me on the 20th, the memo analyzing the documents?

MR. BLASBAND: Yes, your Honor.

MR. MAHONEY: I want to ask one thing be made clear on the record. These documents are being represented, as I understand it, to constitute all the support of a documentary nature that Dr. Littell has for anything he said about Buckley on pages 15 51?

THE COURT: Is that right?

DR. LITTELL: All that I can find.

MR. MAHONEY: Because we have been focusing or the questioning has been focusing so far primarily on the fellow traveler thing. But if he has columns that pick up something

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from an openly fascist journal --

THE COURT: We are talking about any and everything that is backup or background for those pages about Mr. Buckley. You understand that, don't you?

DR. LITTELL: Yes. I understand that we are finall coming to the subject matter.

THE COURT: I don't know what that means. I don't think Dr. Littell is construing it narrowly. It is everythin relating to what you said about Buckley.

DR. LITTELL: Yes, your Honor. The only exceptions would be there are some things that may have existed that he can't find. Well, if he can't find them, he can't find them But this is all that he intends to use at the trial, and mor than this we cannot have.

MR. MAHONEY: Just so it is everything about Buckl that is all I want clear.

THE COURT: All right.

Is there any confusion or question? Thanks a lot.

MR. BLASBAND: There is one question I have. May we have the exhibits back? Maybe we can give them to Mr. Callahan so he can make Xeroxes of them, the ones that were introduced.

THE COURT: Work it out. You all want sets of the exhibits and I want a set.

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I have everything I think through a certain point.

THE CLERK: We have all the exhibits outside that have been collected so far.

THE COURT: I don't want to keep the original exhibits. They should go to the parties, but they should give me back a set of all the exhibits through a certain point. Why don't you make sure that they know that point and then they will furnish copies of all additional exhibits.

Will you do that, Mr. Mahoney?

MR. MAHONEY: Yes.

THE COURT: Thanks a lot.

[In open court]

THE CLERK: On Exhibit AG there are thirteen pages; AH, eight pages; AI, twenty-four pages; AJ, eight pages.

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F R A N K L I N H. L I T T E L L, resumed.

THE COURT: You are referring to things submitted last time?

MR. MAHONEY: Yes.

THE COURT: Apparently there is some misunderstanding. Dr. Littell says there isn't anything.

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q There are documents that you have given us, Dr. Littell, that were Xeroxed and are here in court.

A It may very well be. I had all the documents finished two or three weeks ago, but we didn't get them all in. I see what you are saying.

MR. BLASBAND: You sent them to us, I believe, after the three or four week recess, after we had started the recess, and you sent me some and you sent Mr. Mahoney some, as copies of the same documents. Do you remember that?

Can we go off the record?

THE COURT: Yes.

(Discussion off the record.)

(Plaintiff's Exhibit 72 was marked for identification.)

Q I show you an exhibit that has been marked for

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identification Plaintiff's Exhibit 72 and ask you to describe that for the Court.

A This is a Xerox of a page in Who's Who in America for 1966 to '67. It gives my bio that was available at the time of the attack.

THE COURT: What's the significance of that?

THE WITNESS: The significance is that Mr. Buckley said in print and in his letter to me that he knew nothing about me.

THE COURT: In other words, if he --

THE WITNESS: If he had shown reasonable care, he could have found out that.

THE COURT: We are talking about back-up for the pages in the book. In what way does it back-up anything in the passage of fellow traveler?

THE WITNESS: It doesn't. It is a back-up to the part of the documentation of the exchange.

THE COURT: Are you offering it in evidence?

MR. MAHONEY: I will offer 72, your Honor.

THE COURT: Received.

MR. BLASBAND: If I may, I think it might also aid the Court in that insofar as the Times rule is concerned, it does show Dr. Littell to be a man of letters and an important enough man to be in Who's Who.

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xx (Plaintiff's Exhibit 72 was received in evidence.)

xx (Plaintiff's Exhibit 73 was marked for identification.)

Q Would you tell us what that Exhibit 73 for identification is?

A This is a Xerox of a review of the Jeweler's Eye, a book by William F. Buckley, in which the reviewer concludes, "a man who seems to cherish little and whose passion to conserve is woefully weak. For the conservatives' sense of complexity, Buckley gives us instead a cast-iron dogma and a sour disposition to find sin in his neighbors." Then he concludes that a great many Americans persist in calling him a leading conservative spokesman is lamentable."

THE COURT: How does it back up --

THE WITNESS: It says at the bottom of page 51, I conclude one sentence, "Buckley is not a conservative at all," and that indicates that I am not the only one who has that opinion.

A streak of ideological -- page 52, at the top.

THE COURT: Who is Walter Karp?

THE WITNESS: He is a reviewer for the New York Times.

THE COURT: Then this is Book World? What is

Book World?

THE WITNESS: Book World is a magazine which is devoted exclusively to book reviews, which is --

THE COURT: How do you evaluate that? Is it reliable or good?

THE WITNESS: It is edited by a clergyman who is a man I know. I would say, yes, I regard it as reasonably reliable material.

THE COURT: Do you know anything about Karp?

THE WITNESS: No.

THE COURT: Are you offering that in evidence?

MR. MAHONEY: I offer that in evidence.

THE COURT: 73 is received.

(Plaintiff's Exhibit 73 was received in evidence.)

MR. MAHONEY: The passage that that supports, your Honor, is not part of the complaint as being an alleged libel.

THE COURT: Is there anything in the passages down to the last full paragraph on 51 that this backs up?

THE WITNESS: That is we are eliminating the general theoretical discussion and just concentrating on these last sentences?

THE COURT: The complained libel I guess is just --

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doesn't include the parts you referred to. Is there anything in the claimed -- anything in the passages down through where it says "died shortly thereafter," that this Exhibit 73 backs up?

THE WITNESS: No, I don't think so.

xx (Plaintiff's Exhibit 74 was marked for identification.)

THE WITNESS: Your Honor, if we are reading out -- I mean I could weed out, if the thing is narrowed down to this --

THE COURT: It is narrowed down. They don't claim any libel with regard to that last paragraph or so, so keep that in mind as you produce your materials.

Q I show you 74 for identification, Doctor, and ask you to identify it.

A This is a Xerox of Mr. Buckley's column, On The Right, for October 21, 1962, and it is --

Q What does it support in the passage?

A It is an attack on Martin Luther King. I submitted several items on that indicating -- see, to me when you say -- we have been over this so many times, but like Westbrook Pegler, you see, Buckley could be taken to court, distinguished in my mind about that case was that Pegler relentlessly, obsessively, went after one man.

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Now, Mr. Buckley had done the same thing, and Martin Luther King, Jr., was one of them. He wrote about him constantly, and I think maliciously, so that that is what -- you know, the main point that I got out of the analogy to the case.

It has been said that other readers could get other things out of it, but that's what was on my mind, this obsessive attack on certain people, of whom King was one.

Q Did he lie about King?

A I think he did.

Q In this column?

A Well, I think lies are matters of fact, essentially, so that the question -- I think it is malicious to say that if King's leadership prevailed, there is in store for us bloodshed and terrible strife and ultimately long days of atonement and expiation for Martin Luther King.

Martin Luther King's life and death was devoted to non-violence.

Q When you said lies are a matter of fact, is there any matter of fact about which he lies here as distinguished from assertion of opinion?

A No. I think it is pursuit.

Q Do you know of any lies he ever said about

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Martin Luther King, a factual lie?

A No, I don't recall at this point.

MAHONEY: I will offer this, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 74 was received in evidence.)

(Plaintiff's Exhibit 75 was marked for identification.)

Q Could you identify 75 for us?

A Yes. This is a Xerox of a page in the National Review for January 10, 1967, and it is the first attack on the organization which was published in the National Review

THE COURT: What organization?

THE WITNESS: The Institute for American Democracy.

Q How does it relate to the passages in the Fellow Traveler?

A It relates to the section, the National Review and his syndicated newspaper column, On The Right, and so on, it appeared just a few weeks after the attack on IAD was launched in the John Birch Society bulletin.

THE COURT: Do you have that John Birch Society bulletin attack?

THE WITNESS: Yes, I have. I have the whole

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sequence.

Q Is the John Birch Society bulletin in these documents here that we are going to be introducing this afternoon?

THE COURT: I think he said it was.

A I have it.

THE COURT: You have one group and then Dr. Littell --

MR. MAHONEY: I trust we have the same group, but it is in the documents --

Q Is it in this last batch of documents?

A I think so. This is it, and it should be in there.

MR. MAHONEY: I offer 75.

THE COURT: Received.

(Plaintiff's Exhibit 75 was received in evidence.)

(Plaintiff's Exhibit 76 was marked for identification.)

Q 76, can you identify that for us, Dr. Littell?

A This is a Xerox of the National Review poll, the NR poll. It is a Xerox of two pages. One of them, the May 2, 1967 National Review, page 456.

THE COURT: Is that the date of the poll or what?

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THE WITNESS: The date the report was published.

THE COURT: The date is what?

THE WITNESS: May 2, 1967. Stapled to the second sheet is a second poll report which appeared in the National Review, Page 698, June 27th.

Q What year?

A 1967.

Q What is the pertinence of submitting these poll results to the passage under the Fellow Traveler?

A The line which is taken, the ideological line, is -- well, it reminded me of the slogan in the Weimar Republic and the parties of the radical right, no enemies on the right.

Q Regardless of what it reminded you of, how does it bear on the passage that is in contention in this litigation?

MR.BLASBAND: Objection to the form of the question.

THE COURT: I got his answer --

A I thought we had done this once, the policy question.

THE COURT: No, this is a new one to me.

THE WITNESS: Anyway, it is part of the ideological kind out of the Fellow Traveler.

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THE COURT: In what way? Specifically, what does this show that provides a basis for the alleged libelous passages?

THE WITNESS: It backs up the general position which I took that Mr. Buckley is a fellow traveler of the radical right, sympathetic to the right wing groups and hostile to liberal or anything left of center.

THE COURT: Hostile to whom?

THE WITNESS: To liberals. In other words, the way the poll is stated, as you will see, your Honor, there is no room whatever for a liberal republican in the options presented.

THE COURT: Would it be possible to dig out from your -- you want to offer Exhibit 76?

MR. MAHONEY: Yes, your Honor.

THE COURT: When you are through with 76, let me ask a question, but are you finished with 76?

MR. MAHONEY: I am, your Honor.

THE COURT: Would it be possible to dig out the John Birch Society bulletin that you said came a few weeks before the National Review item of January 10, 1967?

THE WITNESS: Yes.

(Plaintiff's Exhibit 76 was received in evidence.)

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xx

(Plaintiff's Exhibit 77 was marked for identification.)

Q Would you identify 77 for us?

A This is a Xerox of two pages from the John Birch Society Bulletin of December, 1966.

Q How does this support the charges made in the fellow traveler passages?

A It says -- on page 51, "Frequently print news items and interpretations picked up from the openly fascist journals," and in a memorandum which is already in evidence, I emphasized that this refers not only to content but also target and timing. The Institute for American Democracy was launched officially November 18, 1966. In December of 1966 it was attacked in the John Birch Society bulletin. On January 10, 1967 National Review joined the attack. The documents announcing the founding of IAD are already in evidence as Defendants' Exhibits U and V.

THE COURT: These were announcements in Home Front, is that right?

THE WITNESS: Yes.

THE COURT: Building bulwarks against extremists, Defendants' Exhibit U.

THE WITNESS: U and V. They go together.

Q Following this announcement, you say, and we are

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talking now about Exhibit 77, the John Birch Society attacked you, as you put it, in December of 1966, and then National Review attacked in January, 1967, is that correct?

A Yes. One of dozens of lights that went on all over the right wing at the same time.

Q Was the formation of IAD widely publicized?

A Oh, yes. It was carried in The New York Times and in newspapers all over the country. It is -- it is the same simultaneity of the attacks that I am talking about.

Q Would you read into the record what the John Birch Society said about the IAD? Would you just read that paragraph?

MR. BLASBAND: Your Honor, do we really need this? The document is in evidence.

THE COURT: I don't need it. Let me just make a note of the essence of it. I could take a minute to just look at this and compare it with 75. Is 77 offered?

MR. MAHONEY: 77 is offered.

THE COURT: Received.

(Plaintiff's Exhibit 77 was received in evidence.)

THE WITNESS: If you like, I can analyze the content.

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THE COURT: Are you claiming there was a similarity of content between the John Birch attack, so-called, and the National Review article?

THE WITNESS: No, I am claiming the timing and target. That is I think I ammot. I have organized some content analysis, butthat wouldn't come now. It comes later.

THE COURT: You take a look at these and if there is any similarity of content that you want to call to my attention, go ahead.

THE WITNESS: No, this isn't one of those that I analyzed that way.

Q You said that this supports the package -- the picking up passage?

A Right.

Q So you are saying, Dr. Littell, that when the John Birch Society speaks on a subject and then the National Review follows speaking on the same subject, with total dissimilarity of content, that that supports the picking up passage, is that correct?

A No, that is not correct.

MR. BRASCO: Objection to the form of the question.

THE COURT: Really, that doesn't help. I think h

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has explained it to us, Mr. Mahoney. I will sustain the objection. Okay, what is the next item?

(Plaintiff's Exhibit 78 was marked for identification.)

Q Would you identify 78 for us?

A 78 is a Xerox of a page from the National Review, December 27, 1966, and there is what I conceive to be as a non-technician a slanderous reference to Murray Kempton of the New Republic and the New York Post. "Mr. Kempton can't stand the FBI because the FBI can't stand Communists."

MR. MAHONEY: If we can have the full sentence, it says "Mr. Kempton can't stand the FBI because the FBI can't stand communists , and communists are like Helen Gurey Flynn, whose face belongs on American pie mixes." We offer 78.

THE COURT: Received.

(Plaintiff's Exhibit 78 was received in evidence.)

THE WITNESS: I regard the relevance is Kempton is one of several people to whom I referred in that sentence.

THE COURT: I don't understand.

THE WITNESS: He is saying that a man -- he criticizes the FBI because the FBI doesn't like communists. In other words, he is a communist sympathizer.

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THE COURT:What passage in this material do you clai this backs up?

THE WITNESS: This is one of a number of items which I have submitted where it says -- in reference to the one of several people who could take Buckley to court.

Q Just out of curiosity, have you Xeroxed the balance of this thing on Mr. Kempton, the full article?

A No.

xx (Plaintiff's Exhibit 79 was received in evidence.)

THE WITNESS: Murray Kempton was fighting the communists before Mr. Buckley was born.

MR. BLASBAND: I think we ought to have that for the record. I heard something of it.

(Record read.)

THE WITNESS: That's not really true, but almost.

Q Identify 79.

A 79 is a Xerox from a page of the National Review, July 2, 1968. It is an editorial entitled "How Guilty Are Guns."

THE COURT: The date?

THE WITNESS: July 2, 1968.

THE COURT: National Review, editorial?

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THE WITNESS: Editorial entitled "How Guilty Are Guns", and it is part of a general campaign in the radical right against gun registration.

Q What passage in the Fellow Traveler does that support?

A That was part of the thing which led me to conclude that he was indeed a fellow traveler of the radical right.

MR. MAHONEY: I offer 79, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 79 was received in evidence.)

xx (Plaintiff's Exhibit 80 was marked for identification.)

Q Would you identify 80, please?

A 80 is a Xerox of the cover of the National Review, July 2, 1968, which shows a flag "Anarchy" headlining Students, Violence, the New Left.

THE COURT: Didn't get the date.

THE WITNESS: July 2, 1968.

Q Of what is 80 supportive in the passage under the Fellow Traveler?

A This indicates an ideological identification which only an ultra conservative, shall we say, would make.

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Q Of what is that supportive, that ideological identification --

A I am not sure how edifying it is any longer to press this point since we seemed to reach some agreement on it, but I had been at considerable pains to submit as many documents as I could find --

Q This is C or D, in other words?

A Yes. This is one of the C or D level documents.

MR. MAHONEY: I offer this.

THE COURT: Is this something to back up your position of Mr. Buckley being a fellow traveler of the radical right?

THE WITNESS: Yes, ideologically being heavily slanted in that way.

MR. MAHONEY: I offer 80, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 80 was received in evidence.)

Q Can you tell me what 81 is?

A 81 is the same kind of -- 81 is a Xerox of a page in the National Review, September 23, 1968, in which under a box called "Call To Riot" various quotations, I assume that they are true quotations, from Adlai Stevenson, John F. Kennedy, Robert Kennedy, Hubert Humphrey,

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Robert Kennedy, with different dates given, implying that they are calling for riot.

Q What did that support in the Fellow Traveler passage?

A This is part of the same great detail of evidence which convinced me that he excerpted what he thought he could use, which revealed an ideological slant, sympathy, identification with the fellow traveler role.

MR. MAHONEY: I offer 81, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 81 was received in evidence.)

(Plaintiff's Exhibit 82 was marked for identification.)

THE WITNESS: I would add that among those whom he pursued obsessively were Robert Kennedy and John F. Kennedy.

THE COURT: Couldn't just a regular moderate Democrat be interested in this group of quotations?

THE WITNESS: Oh, yes.

THE COURT: Is it really so -- how would you label them if you put them together?

THE WITNESS: I wouldn't put them together. By itself it is nothing. But if you have an obsessive

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pursuit of certain persons, if you present them always in the most disagreeable and contemptuous light, if you have dozens and dozens and dozens of such things, even though no one by itself really amounts to that much, then yo have a picture.

THE COURT: In other words, you aresaying that you characterization of Mr. Buckley come from the overall impact of the materials, not just one single thing?

THE WITNESS: Yes. The reason why he came to me as the best illustration I could think of, I was going to use Harry F. Ward, first.

THE COURT: Who is Harry F. Ward?

THE WITNESS: He was the teacher at Union Theologi Seminary that the John Birch Society accused me of being a disciple of, although I fought him from seminary days on, who in my judgment was a fellow traveler of the communists, but the man is dead, and I thought, well, I am not going to attack -- let him rest. So I picked then an illustratio based on what seemed to me the livest option, to so speak, to illustrate a fellow traveler on the right.

Q When you talk about an obsessive pursuit, how would a non-expert distinguish an obsessive pursuit from a continuing disagreement? I mean, people like Stevenson, Kennedy, Humphrey, these are all noted liberals and

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Mr. Buckley is a noted conservative, how, from reading something like this, can you conclude this is part of an obsessive pursuit of these people rather than a disagreement with what they have to say?

A I don't think you do by itself. The impressions which I formed are based on several years of simply following and watching and seeing what happens. Martin Luther King, Jr., he never lost a chance to write him into the ground and to treat him contemptuously. The same way with John Kennedy, the same way with Robert Kennedy, and there are other illustrations which we may come to in time. Now, I don't think that that is the way you conduct a daily log. You can disagree sharply with another person, but you don't just pick every chance to jump on their backs. Also, you inform them if you do it, incidentally. That is what a daily log is.

Q Excuse me. You inform them, if you do it? What does that mean?

A It just occurred to me that I discovered in March of this year that Mr. Buckley had published our correspondence without even informing me of it, and I had never heard it until this March. Now, that is not the way you carry on a civilized dialogue.

Q If you found it out in March of this year, it has

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nothing to do --

A No, you say what does that mean. I am telling you.

Q Can you identify 82?

A 82 is a Xerox copy of the cover of the National Review for May 16, 1967. Picture of Ian Smith, the man who broke Rhodesia away from his sovereign. featuring a case history entitled "How the U.S. is Helping to Bring Down Rhodesia's George Washington".

Q Of what is that supportive in the Fellow Traveler passage?

A It is part of the low level documents which show that Mr. Buckley's sympathies are predictably and consistently with rightists, in this case with a known racist.

MR. MAHONEY: I will offer 82, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 82 was received in evidence.)

xx (Plaintiff's Exhibit 83 was marked for identification.)

Q 83, will you identify that?

A This is a Xerox of the cover of the National Review for August 22, 1967, identifying Riots, Violence and Civil Rights as the lead article.

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MR. MAHONEY: We offer 83, your Honor.

THE COURT: 83 is received.

(Plaintiff's Exhibit 83 was received in evidence.)

Q Of what is 83 supportive, Dr. Littell?

A This is part of the general ideological alignment with the radical right. I think that a conservative believes that the protection of our rights under the Constitution of the United States of America is part of maintaining civil peace, whereas the radical right seems to think that the achievement of civil rights or the maintenance of them is to be identified with violence and anarchy and arson.

Q Incidentally, Dr. Littell, I don't want to stop to make this point every time, but when you say radical right, can we read that in the context of your statement on page 60 of Wild Tongues, and I quote, "So too with the term radical right, the phrase is preferred by some writers who do not want to apply the precise rubric, which is fascism," so when you say radical right, are we to take that as meaning the same thing as fascism?

A No, it isn't the same thing.

Q Have you changed your mind about what you said on page 60 of Wild Tongues?

A No, certainly not.

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Q What is the difference?

A. If you are dealing as a political scientist writing a textbook, you make very careful distinctions between Falangism and Peronismo, Italian fascism, Naziism, John Birch Society, the German Naturalist Party of Ugenberg, and so forth and so forth. If you are writing as a journal or as a political tract writer, or something like that, you don't stop to make very careful distinctions. I didn't write a textbook. If I had, I would have made very careful distinctions at every point along the way. The term radical right is used simply to cover a much larger area than is fascism.

THE COURT: You do say -- I would read this to say that the -- you say radical right is preferred by some writers who do not want to apply the precise rubric which is fascism. You are saying you don't equate the boundaries of the radical right with the boundaries of fascism?

THE WITNESS: No, no. In fact, at the appropriate time I want to draw a diagram to show you exactly what I do use, how I do use it.

THE COURT: What I guess you are saying is that some writers who don't want to use fascism, the term fascism, will use radical right for things that are fascist?

THE WITNESS: That's true. Just as some people

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refer to fascist things as ultra conservative or some people call some things progressive which is in fact a front for the communists. I don't equate these terms and never have.

Q Let me call your attention to another sentence on page 60 in terms of the "never have" comment. You say fascism is the term to apply to parallel movements and systems today, even though no specialists note technical differences between Italian fascism, German Naziism, Spanish Falangism and other radical right movements."

A Right. Other radical right movements. In other words, the hard core of the right might be precisely called fascist. But if you are talking about a big net which takes in all kinds of conjuries of right wing opinion, and so forth, they are by no means the same. The circle of radical right is ten times as big as the circle of fascism.

THE COURT: Where is it in this book that -- we are concerned about the impact of this book, not what you have privately in your mind. Where is it in this book that outlines and distinguishes radical right from fascist?

THE WITNESS: I don't recall at this point that I distinguish communism from progressism or radical right from fascism, or make a number of those distinctions. This is a crack, your Honor.

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THE COURT: But in being a track, it says some things, and it says some things about Mr. Buckley. With all due respect to Mr. Klagsbrun, I don't think you can read pages 50 and 51 independently from the rest of the book and I think you have got to -- the definition of radical right doesn't -- as used on 51 doesn't appear for -- that phrase doesn't appear just from nothing at that point. Where is it that -- up to that point that -- is there any place where you distinguish fascist from radical right? At least up to that point.

THE WITNESS: Well, I am sure there is.

THE COURT: The most dangerous internal challenge in America comes from the fascist wing, the amount of heavy financing centered in the John Birch Society and its front. Wouldn't you agree that anybody reading that would equate the John Birch Society with fascism, in your view?

THE WITNESS: I think they would be inclined to, probably. But nowhere do I accuse Mr. Buckley of being a fascist or a member of the John Birch Society.

THE COURT: What is he a fellow traveler of?

THE WITNESS: He is a fellow traveler of the radical right on the right wing.

THE COURT: But who is in the radical right, according to your book? John Birch Society? Right?

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THE WITNESS: Yes. I made a list of the ones I thought were most important back here.

THE COURT: The one you mention most often in the first part of the book up to page 50 and page 51 is the John Birch Society, isn't it?

THE WITNESS: Right. And I also submitted a whole series of documents where it seemed to me Mr. Buckley is taking his signals and emphasizing certain things which were consonant with the John Birch Society policy. But not alone, because it was also the policy of a dozen other organizations, some of them much less well disciplined and less well financed.

THE COURT: But wouldn't you agree that if one were reading your book and they were arriving at page 51 and they see the description of Buckley, wouldn't you agree that they would read this as saying that Buckley is a fellow traveler of the John Birch Society, among other things?

THE WITNESS: I don't think so.

THE COURT: No?

THE WITNESS: Because some place I said rather carefully that he wasn't.

THE COURT: Are you talking about page 52?

THE WITNESS: Your Honor, you may know this book

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better than I do at this point, if we are trying to find certain paragraphs and pages.

THE COURT: Let us suspend for the day.

MR. MAHONEY: Could I ask one more question bef we conclude on this point?

THE COURT: Yes.

BY MR. MAHONEY:

Q At page 59 of the book, you commence on that page by saying "Although the terms extremism and radical right are widely used, they lack precision. So do comsymp, pink and new left. We shall continue to use them on occasion to save time and to avoid endless repetition of the same word." What was that word whose endless repetition you were avoiding by using extremism and radical right?

A Any one of them.

Q What?

A Any one of them.

Q No. There is one word whose endless repetition is being avoided. That's what your book says. Now, what is that word?

A Comsymp, pink, new left, extremism, radical right or any other one, to use the same word. Endless repetitio of the same word means simply you have to find 10 or 12 dif ferent words in order to --

Q I know, but you are saying here that you are using the terms extremism and radical right to avoid endless repetition of the same word. I have asked you, what is the word whose endless repetition you are avoiding?

A No,no, that's not -- the same word, the same word means if you always used extremist, you know, every two or three sentences you would have to use the same word, wouldn't you? It is a literary question. You are assuming that --

THE COURT: I get the point.

THE WITNESS: Mr. Mahoney, you are assuming that it is a code word that I am using there when I say same word. I am not using a code word at all. It is simply a literary point.

(Court adjourned.)

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lpl

WILLIAM F. BUCKLEY, JR.,
Plaintiff,

vs.

THE MACMILLAN COMPANY and FRANKLIN H. LITTELL,
Defendants.

70 Civ. 2844

Before: HON. THOMAS P. GRIESA, D.J.

New York, June 12, 1974.

THE COURT: Good morning. All right, Dr. Littel.

F R A N K L I N H. L I T T E L L, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q Turning now, Dr. Littel, to 844 for identification, would you please describe that document?

A This is a Xerox of the cover of the National Review, April 5, 1966, which features the theme of the autonomy of the police and the defense of the police from civilian review boards and that sort of thing.

Q In what way is that supportive of the statements made?

A That is a Grade D item indicating ideological bent.

MR. MAHONEY: I offer this, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 844 received in evidence.)

xx

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Q Can you identify 85 for identification?

A This is a Xerox of the page in the April 5, 1966, National Review in which some defensive things are said in favor of the John Birch Society.

Q What is that supportive of?

A That is again Grade C, perhaps, ideological bent.

MR. MAHONEY: I will offer it.

THE COURT: Received.

(Plaintiff's Exhibit 85 received in evidence.)

THE COURT: I don't understand this to be really a defense of the John Birch Society. I don't want to get into an argument with you, but in what way is this -- my point is, I am not arguing this point, I am just asking a question. In what wayis this a defense of the John Birch Society or indication of agreement with their views?

THE WITNESS: It is poking fun at those who are trying to deal with a conspiracy.

THE COURT: Isn't that poking fun at somebody raising a red herring, the way people were poking fun or worse -- I guess they weren't poking fun, they were disturbed about Senator McCarthy back in the early fifties, saying that he was raising a red herring about Communists

in the State Department and Communists on campus, and so forth.

THE WITNESS: It has, for example, it reads, "This year's spring offensive," that is the spring offensive against the Birches, and you will find in other documents which you have at the same time, Billie James Hargis said the ADL has launched an offense against the John Birch Society, Richard Cotten says so, Frank Koppel says the major objective of the ADL is to destroy John Birch Society; Robert Welch says the ADL is zeroining in on us, and so forth.

THE COURT: What is the ADL?

THE WITNESS: The Anti-Defamation League. I am quoting now from this National Review. "This year's spring offensive was launched by the Anti-Defamation Leagu massive broadside," and then it continues to show this kin of sympathy for the John Birch Society under attack and poking fun at those who consider it a conspiracy, and they are trying to deal with it as such.

THE COURT: I get your point. You say this reflects the same tone and timing as contained in other Hargis and other --

THE WITNESS: Except that there are more important things in their material which I want to call

attention to.

THE COURT: Okay. Continue.

Q Would you identify 86, please?

A Excuse me. I started to say, this item which we had just had before us also refers to something which Mr. Mahoney said yesterday reminded me, I guess, is not in dispute. Namely, that the quarrel with Mr. Buckleywas with Mr. Robert Welch, not with the John Birch Society per se.

Q The exhibits are in the record; I won't argue with you about that, but that is just not correct.

A This is --

THE COURT: That is 86?

THE WITNESS: 86. This is a Xerox of a page in the National Review, which is a Buckley by-line, entitled "Whose Hand To Shake," and this is --

THE COURT: What is the date?

THE WITNESS: It's April 19, 1966, and it is an attack on the Anti-Defamation League, Arnold Forster, by name, and the "36-page indictment of Birch Anti-Semitism," in the course of which Mr. Buckley also says, "Interesting, for instance, to know whether Mr. Forster would counsel against shaking the hands of avowed Communists." In other words, in the course of the argument, apart from

the fact that he is attacking the ADL and its specialists on extremism, he is also employing sympathy with Communism, and I think this is a very revealing matter.

Incidentally, the ADL reports conclude that the John Birch Society is anti-semitic in nature, and I did not conclude that. I think that the evidence is inconclusive on that subject.

THE COURT: Can youtell us a little more about the Anti-Defamation League? What is that?

THE WITNESS: The Anti-Defamation League is a major institution under the -- it is one of the agencies or projects of the B'Nai B'Rith, the leading Jewish men's organization. In fact, it's reall name is B'Nai B'Rith Anti-Defamation League. And they were founded at least 50 years ago. I should know the date, I have used it often enough in lectures, but it's at least 50 years old. To combat Anti-Semitism and defend American Jewry against discrimination and calumny and so forth.

One of their sections is and has been for many years an archive and a staff dealing with organizations which are extremists, particularly if they have an anti-Semitic tinge to them.

The heads of that organization are Benjamin Epstein and Arnold Forster, who are also the authors of

the book Danger On The Right.

THE COURT: Forster and Epstein are heads of the archives?

THE WITNESS: Well, the head of the section that deals with extremism, where they have an archive, among other things. They have just published a book now, called The New Anti-Semitism, which deals with the New Left and the anti-Semitism of the people who think they are progressors.

THE COURT: May I see Exhibit 86?

(Pause.)

MR. BLASBAND: Your Honor, if it might be of some help, the description of Messrs. Forster and Epstein is set forth on the cover of Danger On The Right.

THE COURT: I take it, 86, are you offering 86?

MR. MAHONEY: I offer 86.

THE COURT: I will mark it in evidence.

(Plaintiff's Exhibit 86 received in evidence.)

THE COURT: 86 indicated that the ADL published what is termed an indictment of the Birch Society regarding anti-Semitism, right?

THE WITNESS: Right.

MR. MAHONEY: The substance of it, your Honor,

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is that Mr. Buckley was taking the ADL to task, one, for publishing this without making its evidence available, and, two, he was attacking -- he was taking Mr. Forster to task for refusing rather ostentatatiously to shake hands with a former Congressman who was a member of the Birch Society.

THE WITNESS: And, three, suggesting that he'd be perfectly happy to shake hands with Communists, although they wouldn't shake hands with Birches.

THE COURT: Let me read this for a second.

(Pause.)

THE COURT: This is about what, Grade C or D or what?

THE WITNESS: I'd say about Grade C.

THE COURT: I am not sure I'd grade it that high

THE WITNESS: I'm not talking about the quality of the writing.

THE COURT: It takes the ADL to task, it takes the Birch Society to task, it takes about everybody to task, don't you feel?

THE WITNESS: I think it is more defensive of the Birch Society than it is attacking ADL.

Q You note this passage that says one important redundant theme exhibiting the Society's ultimate remarkabl

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reliance on the conspiratorial end of things -- do you take note of that?

A Yes.

THE COURT: We can pass that.

Q Would you describe 87 for identification?

A This is a Xerox of the first page of the National Review, May 3rd --

THE COURT: 87?

MR. MAHONEY: Yes, sir.

THE WITNESS: It's the summary of the Linus Pauling decision, so I don't know whether it is even --

THE COURT: If nobody wants to introduce it --

THE WITNESS: I think Mr. Mahoney has already given us the date on that. Isn't that duplicative of the date?

THE COURT: The question is, is there anything that you relied on in that document?

THE WITNESS: No, this material, I was aware of it. I didn't rely on it in that sense.

MR. MAHONEY: I will offer it, your Honor.

THE COURT: For what?

MR. MAHONEY: Because there is a description in here, your Honor, because this Pauling thing has come up, there is a description in here of the fact, for instance,

that the National Review was reviewing on the report of a Senate committee and what it said about Pauling.

THE COURT: It was something in your files, right?

THE WITNESS: Yes. Well, I was aware of it. That is from Temple University.

THE COURT: I will receive it.

xx (Plaintiff's Exhibit 87 was received in evidence.)

Q Would you describe 88?

A 88 is a Xerox of a page from the May 31, 1966, National Review. It is a column by Mr. Buckley in which he criticises the Supreme Court for its declaring constitutiona the voting rights, the Tennessee case. And in general maintains an attitude on civil rights which is Right Wing, if nothing else.

Q Of what in Wild Tongues about Mr. Buckley is that supportive?

A This is simply an ideological bent here.

Q You mean the passage over on page 52?

A No, I mean the whole reason why it seemed to me reasonable to use as an illustration of a fellow traveler of the radical right.

THE COURT: May I see that?

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(Pause.)

THE WITNESS: It maintains an elitist view of voting rights.

THE COURT: 88 is received.

xx (Plaintiff's Exhibit 88 was received in evidence.)

Q Would you explain 89 for us, Dr. Littell?

A 89 is a Xerox of a full pamphlet of 11 pages put out by Billie James Hargis, which was one of the major attacks of many dozens which I received at the time I became National Chairmanof the Institute for American Democracy.

If we went into a textual exegesis of it, you would find that it is based on the John Birch Society Bulletin, the content-wise now, as well as the timing and the target, and on another sheet which was put out by--

THE COURT: In other words, content and target, you are saying, was similar to a John Birch Society publication?

THE WITNESS: Right.

THE COURT: What publication was that?

THE WITNESS: Content, target and timing.

MR. MAHONEY: I believe that is one of the exhibits of yesterday.

THE WITNESS: No, there were several others as well, which I have.

MR. MAHONEY: I think he is referring to 77, your Honor.

THE WITNESS: No, there were two others besides.

THE COURT: What is the date of the pamphlet?

THE WITNESS: The pamphlet isn't dated.

THE COURT: Do you know when it came out?

THE WITNESS: I received a copy some time in 1966, I think. It came out about the same time as the other -- wait a minute, maybe I have got a note.

(Pause.)

THE WITNESS: It was part of a flood of attacks, in other words, one of the major ones. I think the date is given on that sheet which I submitted some time ago from my journal June of 1967. It is dated in Exhibit 20.

THE COURT: I see that, Item 3 under General Case.

THE WITNESS: Right.

THE COURT: June, 1967.

Q In what way is this supportive of the assertions made of Mr. Buckley in Wild Tongues?

A It doesn't have that function. It's part of

the general story and one of the major items of dozens of simultaneous attacks which were made on me, including Mr. Buckley's attacks.

THE COURT: Are you drawing the conclusion that Mr. Buckley was -- you are drawing the conclusion that Mr. Buckley's timing and target is the same as the target and timing of --

THE WITNESS: Several dozen others.

THE COURT: How about the content? Does Mr. Buckley, say, convey the same ideas conveyed in the Hargis thing?

THE WITNESS: Yes. I have made a textual analysis of this at several places which I can --

THE COURT: All right. 89 is received.

(Plaintiff's Exhibit 89 was received in evidence.)

Q Would you go ahead with that?

A That will take at least two hours.

THE COURT: No, we don't have to take that long.

THE WITNESS: I have the whole thing -- the corrective -- I have got the dates, the data -- all --

Q Let us stick with this.

A I think it would be better to come back when there is time to do a little consistent thinking.

THE COURT: No, wait a minute. The attack on the IAD in the National Review was Plaintiff's Exhibit 75. Let us get 75.

THE WITNESS: There were several others.

MR. MAHONEY: This is the one that is contemporaneous with that.

THE COURT: I just want to get an idea and I would like to get it right now and as soon as possible what it is that you contend are the same ideas conveyed by the National Review or some other Buckley publication, and this Hargis pamphlet. Unless I mistake your intention, I understand you contend that --

THE WITNESS: My contention is, and I have here the dating, the timing, the content analysis and the rest of it.

Q Let us just do the content --

A No, I am not going to do that. All I am saying is, it will take a little time to tell the story. And I can't make sense except on timing and target of these two items. You have to get the whole picture in order to see.

THE COURT: Then let us get all the items into evidence that you are referring to there, and we will then compare them.

THE WITNESS: That I would appreciate much.

THE COURT: You haven't got them all in yet, right?

THE WITNESS: Right.

THE COURT: We will defer that.

xx (Plaintiff's Exhibit 89 was received in evidence.)

Q Can you identify 90, please?

A 90 is a Xerox of the front page of Richard Cotten a newsletter called Conservative Viewpoint. It comes out in Bakers Field, California. The date January 12, 1967, and it is an attack on me and on JAD practically simultaneous with the National Review attack and many others.

Cotten is a notorious anti-Semite on the West Coast.

Q Do you know of any relationship between Mr. Buckley and Mr. Cotten?

A Not personally, and Mr. Buckley denied it, which I am glad to accept.

Q In what way is this supportive of the statements made in Wild Tongues about Mr. Buckley?

A It is part of the general picture, the background to the -- my conclusion where Mr. Buckley stood in the ideological world.

THE COURT: Is this one of the themes you want to compare?

THE WITNESS: Right.

THE COURT: All right. Why don't we go along. You want to offer 90?

MR. MAHONEY: I will offer 90.

THE COURT: Received.

xx (Plaintiff's Exhibit 90 received in evidence.)

Q Can you describe 91?

A 91 is a Xerox of a newsletter called The Herald of Freedom. It is an item like the one just received, which is put by Frank Koppell on the East Coast, in New Jersey.

MR. MAHONEY: The date is December 30, 1966, your Honor.

THE COURT: Is this another attack?

THE WITNESS: This is an attack, full-scale, four-page attack on me, and to a certain extent on IAD which followed in a matter of two weeks after the initial John Birch Society attack.

Q In what way is this supportive of anything that is said by Mr. Buckley in Wild Tongues?

A It has the same function as the previous item.

MR. MAHONEY: I offer 91, your Honor.

THE COURT: All right. Received.

(Plaintiff's Exhibit 91 received in evidence.)

Q Can you describe 92?

A 92 is a Xerox of the two pages of News and Views, which is the newsletter put out by the Church League of America. The date is January, 1967, and it is part of the same Right Wing attack on me, and a little later I will show how textual criticism shows the content as well as the timing and the target to be duplicatory.

Q Of what? Of National Review or the John Birch Society?

THE COURT: I think that is a group of things he wants to compare. Let's wait on this.

MR. MAHONEY: I will offer this, too, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 92 received in evidence.)

Q Will you describe 93?

A 93 is a two-page attack on me and the IAD, also News and Views, the date here is November, 1968. The title is The ADL - IADI Axis. That is part of the

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same picture of the Right Wing attack.

Q And it is supportive in the same sense, that is, the relationship it has to Wild Tongues?

A Right.

MR. MAHONEY: I offer 93, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 93 received in evidence.)

Q Can you describe 94?

A 94 is a Xerox of a page from News and Views, the same sheet, the same newsletter. The date is June, 1968. Most of it is an attack on TAD, on me, and on one of our sponsors, Steve Allen. And I will show a little later how this is related to Mr. Buckley's writing on the same subject.

MR. MAHONEY: I offer 94, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 94 received in evidence.)

Q 95, would you identify that, please?

A 95 is a Xerox of a newspaper item from the Washington Post which was in my file when my wife took care of the Xeroxing. I'm not sure of its relevance. It is a political report on the New York Mayor's campaign, and

I do not think we are discussing that at the present time.

Q Did this have any relationship to anything you said in Wild Tongues?

A I do. I do remember earlier we discussed whether Mr. Buckley is a political figure or not, but I think that has been more or less agreed upon.

THE COURT: We don't need that.

MR. BLASBAND: There may have been, your Honor, an allegation of being a perennial candidate is some kind of libel.

MR. MAHONEY: It is stipulated he ran for Mayor.

THE COURT: We will receive 95.

(Plaintiff's Exhibit 95 received in evidence.)

THE WITNESS: Getting those things together was a rather difficult task; I am sorry.

Q Would you identify 96?

A 96 is a Xerox of a page from the National Review, the date is November 19, 1963. It is an article, it is an On the Right Column, by Mr. Buckley, in the course of which he says, "So I stand by my statement of a year or so ago that I have nothing against, in fact, I have a considerable admiration for those members of the John Birch Society whom I have met or corresponded with, and I judge

them as individuals, not as members of the Society."

Q You are reading this last paragraph?

A I read a sentence out of it.

Q What did you conclude from this?

A Well, one of the things which puzzled me at the time was whether Mr. Buckley's purported break with the John Birch Society was a personal break with Mr. Welch or a break with the Society, and whether it was genuine, if overt. I had over a period of time accumulated the conviction that his sympathies were very strongly in that direction, and I did not know when I wrote whether his supposed break was a genuine break or not.

Q You have up here, there is another sentence that reads, on this same point, another column of sentences:

"Let me as a personal matter add that my own experience does not agree with Mr. Goldwater's," and then he quotes, "Namely that, all members of the Society I have met are good people." They are not in fact all of them good people, at least not all of them I have had experience with. I have letters from some of them which are the quintessence of intolerance, of a crudeness of spirit, of misanthropy.

Did you take that into account in terms of his evaluation of the people that he knew in the John Birch

Society?

A Yes, but we are not talking about people as people, we are talking about power centers and structures. Everyone of us has the experience, I imagine you do, Mr. Mahoney, even in the conservative party there are some people that you don't like. That doesn't change the question of ideological commitment or political conviction or what you need of the function of a certain institution.

Q And this was written about two years before the major issue of the National Review of the John Birch Society; is that correct?

A Yes. That is an early document, but it is was one which I had and helped to shape my mind on the subject.

MR. MAHONEY: I offer 96.

THE COURT: Received.

xx (Plaintiff's Exhibit 96 received in evidence.)

Q Would you describe 97?

A 97 is a Xerox of an item from The New York Times, April 6, 1965, in which there is an altercation reported between Mr. Buckley and a number of public figures as to what he said or didn't say and the nature of it, concerning police brutality at Selma, Alabama, which was one of the most famous, I would say police riots in our

recent history. Mr. Buckley says that he's been misquoted by the press, which is his standard demurrer, but the people who protested what he had said indicate that, and I think this is characteristic throughout what I have read of Mr. Buckley's writing, that he is also defensive of the police rather than the citizenry as a whole.

Q Were you aware that the Herald-Tribune printed an apology to Mr. Buckley on their editorial page for their comments concerning this?

A No.

MR. BLASBAND: Your Honor, I object. This is an editorial from The New York Times.

THE COURT: Overruled. You weren't aware of any New York Herald-Tribune?

THE WITNESS: No. It is a Grade C item.

Q Would you describe 98?

A 98 -- I am not sure but what we have had this before. 98 is a Xerox of a column by Mr. Buckley which I got from the Washington Daily News. It is August 18, 1965. Again, it includes an attack on what he calls the anarchic teachings of Mario Savio, for whom I have no brief, and the Martin Luther Kings and their disciples. This is again a misrepresentation of Martin Luther King's position, and it is part of the obsessive constant attack

on him, which caught my eye.

THE COURT: He is saying here, criticising Martin Luther King for advocating disobedience to the law.

THE WITNESS: Right.

MR. BLASBAND: I think he is calling him an anarchist, your Honor.

THE COURT: That is the background of anarchy.

THE WITNESS: That is a matter of opinion. I would say that Martin Luther King, Jr. was upholding the law of the land against those who were breaking it.

THE COURT: Right, I am sure that you would. I guess the problem --

THE WITNESS: Including some sworn public officials.

THE COURT: What begins to emerge to me in all this -- I will be interested to hear your comparison between Buckley and Hargis, and so forth, because these Buckley columns, there is more to them than what you remark about in your testimony. You pointed to one word, "anarchy and I picked this column up and I read the whole thing; it's much more sophisticated, whether you agree or disagree, than simply calling Martin Luther King anarchic.

THE WITNESS: Right.

THE COURT: Whether we agree or disagree is

beside the point in this lawsuit. But the content of what Mr. Buckley says is a lot more sophisticated and broader than simply the name-calling anarch

THE WITNESS: Right. I agree completely. But the use of the term of Martin Luther King as an illustration of anarchy and the charge that he is a law-breaker, which has been documented in other Buckley writings and so forth, indicates to me, or did indicate an idealogica bent which seems to me to be, and also an obsessive attack on a man whom I admired very much.

THE COURT: That is fair enough. The only thing is --

THE WITNESS: I might call it Grade D, and as I say, if I had only four items like that I wouldn't even think of bringing them in. But when I had read them by the dozens and brought in at least some of the stuff that I had, I think, what I am trying to say is that they made to me a pattern.

THE COURT: Isn't it true that there undoubtedl were lots of people in the United States who disagreed with Martin Luther King?

THE WITNESS: Certainly is.

THE COURT: People of all different spectre, places in the political spectrum; is that right?

THE WITNESS: I criticized him in this book, and that is one of the reasons why the New Left savagely

criticized the book, sure.

THE COURT: If you are trying to write an accurate statement about Mr. Buckley, don't you have to question whether his attacks on Martin Luther King and other people, are they the same kind of attacks as the attacks of, say, Cotten, Hargis, or somebody else? You have to do that, don't you?

THE WITNESS: I did.

THE COURT: And you say you did. I guess the big question to come -- I think it will be very interesting, and let's not delay that.

THE WITNESS: All I am saying at the present time is that there's substantive reason or documentation of Mr. Buckley's ideological bent which syncopates with the radical right. I am not arguing content -- as a matter of fact, you know, some of these are very well written and reasonable articles. I am not even asking that. I am just indicating a consistent sympathy with issues, persons and "lines," which is the reason why he seemed to me to be an excellent illustration of a rogue comet. A fellow traveler is a person who moves in and out of the gravitional orbit of Right Wing or Left Wing or Methodist Church or Jewish Civil Service or whatever, and he is not always there. Sometimes he is even against something, but there is still that type

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of rogue comet relationship. That's all I am saying.

Q That isn't all you said. You said he functions as a deceiver, didn't you?

A Yes. I said the fellow traveler functions as a deceiver, but he might be quite innocent and unaware of it. He might not be intentional deceiving. If people see what he is doing -- I mean, I have known Methodist preachers who were on 25 fronts of what I consider Communis front organizations. They were just stupid. They were n deliberately deceiving, but they nevertheless functioned as deceivers, to ordinary people.

THE COURT: Let's get this. In this passage at the bottom of page 50, functions as a deceiver, you were saying in the book, were you not, that Buckley functioned as a deceiver.

THE WITNESS: I didn't. Well, you are taking th general discussion of the nature of fellow traveling and applying that to what I said about Mr. Buckley.

THE COURT: Of course I am. That is the only weight of the lawsuit, is what were you saying about Mr. Buckley. You have got this statement at about at the botto of page 50 talking about a fellow traveler, and you say among other things he functions as a deceiver. He is a danger to political movements and Republican institutions

and integrity because he functions as a deceiver.

Next page after the interlude with Von Ribbontrop, you say in America the outstanding example of this function is William Buckley.

Were you not saying that Buckley functioned as a fellow traveler and therefore functioned as a deceiver?

THE WITNESS: May I use an illustration? You are trying to explain a certain kind of automobile to people who don't know what it is. You say an automobile has headlights, a bumper front and rear, it has doors, and then you describe it. A vehicle comes along which doesn't have any front bumpers. Is that an automobile or isn't it?

In other words, the problem of trying to apply every single point of a general description to a single discreet case is not all of those points apply. For example, I said in the book that anti-Semitism was the No. 1 clue to totalitarian organizations, and so forth. I think that is true. But there are several totalitarian organizations which don't have anti-Semitism as a preliminary plank. The question of whether Mr. Buckley functions as a deceiver or not is imperatively tied up with the question whether we understand that deception and confusion is wilful, deliberat or not.

I am not accusing Mr. Buckley of deliberately

deceiving anybody. But if you want to say --

THE COURT: Wait a minute.

THE WITNESS: -- does abstractly, if people are confused by what he writes or something, then you could say he has that role, although I didn't say it, because I wasn't thinking of him particularly when I wrote that general theoretical statement.

THE COURT: Let's get away from an interpretation of the book. Let's get to your view on Mr. Buckley as of '69. Are you telling me that you did not consider that Mr. Buckley was intentionally acting as a deceiver on behalf of any of these radical Right or Fascistic organizations? You didn't contend or you didn't think he was particularly acting as a deceiver for any such organizations, right?

THE WITNESS: I wasn't sure, and, therefore, I didn't say it.

THE COURT: You were not sure --

THE WITNESS: I wasn't sure. I mean, remember as best I can, I was not sure whether his break with Robert Welch was an overt or a genuinely hundred per cent break.

THE COURT: But you would not have wanted to write expressly the statement, Mr. Buckley functioned as a deceiver intentionally for the John Birch Society or any of those other groups you referred to, right?

THE WITNESS: I agree.

THE COURT: All right. Let's come to the statement that we talked about a number of times, the statement at the bottom of the second paragraph on page 51.

"The National Review in its syndicated column On The Right, frequently in its news items and interpretations picked up from the openly Fascist journals and have been important and useful agencies for radical Right attacks on honest Liberals and Conservatives."

Just putting that statement aside, although my question will relate to that, did you believe then that Mr. Buckley used news items and opinions from openly Fascist journals intending to purvey those things through his own column? Purview those ideas through his column?

THE WITNESS: Well, I certainly think the first part of it, in fact, I put together a textual criticism here which I think will demonstrate in certain limited cases what I conceive to be a very general pattern.

THE COURT: Maybe this is either repeating or anticipating, but what did you have in mind when you wrote the words "openly Fascist journals"?

THE WITNESS: I had primarily in mind the John Birch Society Bulletin, and secondarily in mind the newsletter of the Church League of America, which has a peculiar

relationship to the John Birch Society.

THE COURT: Any others?

THE WITNESS: As I remember, this is what I was primarily aware of at the time.

We have a few more items, and I would like to --

THE COURT: But I want to find out --

THE WITNESS: In order to keep my thoughts coherent.

THE COURT: What we are focussing on now is, let's call it a question of intent. I want to ask you this: did you believe that Mr. Buckley took news items from the John Birch Society Bulletin or opinions expressed inthat bulletin and passed them on in his own columns intentionally to cover or hide the fact that they came from these other less auspicious publications?

THE WITNESS: No. The first, I did believe.

THE COURT: When you say the first, what do you mean?

THE WITNESS: That he did pick up items and emphases. But why he did it, I would say he did it because he was sympathetic generally to this, you know, no enemies on the right; he appeared on the platform with these people, many platforms, and I think he was doing what you do in ever fraternal association: interparty, inter-religious or inter-ideological, that is, you are as friendly as you can

be.

Why he did it, I wouldn't say he did it as a cover-up, you know, technically as a cover-up. I would say he did it generally because he agreed with them ideologically. But not always. That is what he was, as I tried to point out; I never said he was a member of or under the discipline of or anything like that at all. I dont think he was and I don't think he is today.

THE COURT: You believe that he essentially took factual and opinion items from, say, the John Birch Society Bulletin and used those things in his own writings, right?

THE WITNESS: I think I can prove it.

BY MR. MAHONEY:

Q Because of his sympathy with the John Birch Society?

A Well, general Right Wing sympathy.

THE COURT: We will take our break.

(Recess.)

THE COURT: I think you recall, you did not believe that Mr.Buckley intentionally functioned as a deceiver for the John Birch Society or any one of these other radical Right groups; is that right?

THE WITNESS: Right. I think he is sincere in what he is doing. He is not an agent.

THE COURT: All right. Go ahead, Mr. Mahoney.

BY MR. MAHONEY:

Q In your discussion of fellow travelers both here --

MR. BLASBAND: Excuse me, your Honor. My notes are a little different.

THE COURT: Anyway, we have the answer. Go ahead.

Q In your discussion of a fellow traveler both in this passage and elsewhere in the book, is there any specif fellow traveler you talk about, other than Von Ribbentrop a Buckley?

A Yes, there are some other illustrations, some other use of the word.

Q I am talking about any other persons who filled this function; is there any other person you refer to in th book, other than Von Ribbontrop and Buckley, as a fellow traveler?

A Yes. You are asking me what I remember. There are probably several. I remember I used the illustra tion of Harry F.Ward and Jack R. McMichael.

Q Where?

A Pages 57 and 58, at least.

Q 57 and 58 --

A Excuse me, 150 -- well, there is a whole section in there. 157 to 159. They are illustrations of fellow traveling with the Left Wing. I am sure there would be some others if you went through and picked them out, or probably there would be. I talk about the function, I even define it in a couple of places.

Q That is the second thing I wanted to ask you about. Page 131, where you define the functions. Fellow traveling is to follow a line fixed by someone else in another place who are pretending to integrity and independence of discussion and decision.

THE COURT: Where are you now?

MR. MAHONEY: Page 131, your Honor. The last full sentence on page 131.

Q Does that statement apply to the four individual cases of fellow travelers towhich you make reference in the book?

A Well, it's an abstract statement which isn't true in all cases, I guess.

Q Would a reader of the book have any reason to believe, if you have only claimed four concrete cases in the book, is there anything in the book that would lead a reader to believe that this statement, this definition didn't apply to any one of them?

A I don't think that they are going to read it --

MR. BLASBAND: Objection, your Honor. I do not think the witness has to speculate as to what the reader would believe.

MR. MAHONEY: I am talking about the fair intendment, your Honor.

THE COURT: I will overrule the objection.

A I think there is another case here, Professor Pont, who I single out also.

Q Let us say there are five. Go ahead.

A Five that we have identified and there may be more.

Fellow traveling in the exact sense is to go alon with, just as it says, a line which is essentially fixed by more disciplined, more heavily ideological bloc, and it doesn't mean that a person who is an occasional fellow traveler is also following that line; it simply means that at the time that fellow traveling is going on, we speak of that way. I think it is an insolicitous phrase to say wh pretending to integrity, while seeming to evince, or something like that.

THE COURT: That is the problem. It is really the words and the implications arising from those words of dishonesty and bad faith. That is really I think the mai

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problem in this page 50 to 51.

THE WITNESS: What you are saying, your Honor --

THE COURT: The words "functions as a deceiver." When you say the National Review frequently prints news items picked up from the open Fascists, in other words, as if this is a kind of covert purveying of Fascist doctrine, then your original talk about Buckley in terms of slander and the remaining talk, the problem with this passage, and this of course gets to argument, is this consistent use of terms which connote bad faith and deception.

THE WITNESS: That is your polemic.

THE COURT: I agree with you, it was insolicitous to use the word "pretending," but it is there. That is really our problem. I think it is the remaining problem in the lawsuit. Maybe you didn't intend it.

THE WITNESS: Well, I'd have to think about the content analysis.

MR. BLASBAND: In the next page, 132, which follows that section, there is some clarification where the author talks about innocence+s?

THE COURT: Okay. I think that is clear.

MR. MAHONE: Your Honor, let me address myself to that for a moment. He is defining various terms. He says fellow travelers are one thing and innocence+s are another.

He is defining two different terms.

THE WITNESS: Yes, but they overlap.

MR. MAHONEY: You don't say they overlap there.

THE WITNESS: If we put out a revised edition, I will.

THE COURT: All right. I see your point, Mr. Blasband.

MR. BLASBAND: Thank you, your Honor.

THE COURT: Let us go ahead and get the other materials and let's have that exegesis.

BY MR. MAHONEY:

Q Just before we leave this, did you have any basis at the time you wrote the passages about Mr. Buckley in this book, did you have any basis for believing that Mr.Buckley was operating in bad faith in terms of his public writings and the utterances with respect to his relationship to the John Birch Society, the Church League of America or any other organizations of that nature?

MR. BLASBAND: Your Honor, I don't understand the question and I object to the form.

A I am not sure what it means either.

THE COURT: I will sustain it. I think you covered that. He stated before he didn't believe it. I will sustain the objection. Let's go on and get these

other materials in.

Q Would you identify 99?

A 99 is a Xerox of three pages from the John Birch Society Monthly Bulletin for May of 1967. And again, this is an attack on the Institute For American Democracy and on me, which is part of the general picture of response and Right Wing to the IAD and the attack on me for accepting the chairmanship of it.

Q What is that support?

THE COURT: Isn't that part of the story?

THE WITNESS: Yes.

THE COURT: Let us get these materials in. 99 is received.

xx (Plaintiff's Exhibit 99 received in evidence.)

THE COURT: What else?

Q Can you identify 100?

A 100 is a Xerox of a sheet of the John Birch Society Monthly Bulletin, October, 1967, again an attack on me and IAD. It identifies me and IAD as Communist plotters.

Q It identifies you and the IAD as Communist plotters? Where do you see that, Dr. Littell? There is a reference to Communist plotters.

A "The frantic efforts of Dr. Littell and his

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IAD crowd to discredit and hamper our Vietnam petition campaign have strongly confirmed our feeling in its strategic importance. The danger which it poses for the Communist plotters in Washington is very real."

Q In what way was that supportive?

A In the first place, we didn't have any, our position on Vietnam was generally supportive --

THE COURT: It doesn't call you Communist plotter it says there are some Communist plotters in Washington, doesn't it?

THE WITNESS: But our office was Washington. Maybe he is talking about the President, for all I know. But I assumed that since he was -- at least we would be included.

THE COURT: All right. Do you offer 100?

MR. MAHONEY: Yes, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 100 received in evidence.)

Q Would you describe 101?

A 101 is a Xerox of the cover and two pages of a special Bulletin put out by the John Birch Society, September of 1967. The cover speaks of the Communist attacks on the John Birch Society and the two pages are an attack on

me as its chairman and on the institute -- on IAD, Institute For American Democracy and the content, as I will show shortly, is duplicated in other Right Wing literature at the same time.

MR. MAHONEY: I offer 101, your Honor.

THE COURT: 101 is received.

(Plaintiff's Exhibit 101 received in evidence.)

Q Would you identify 102?

A 102 is a Xerox of four pages of quotations from writings by Robert Welch, which comeout of my notebook. There are -- I have a feeling we have had this before, but in any case, the --

THE COURT: I am sorry. What is 102?

THE WITNESS: It is a Xerox of four pages of writings by Robert Welch, in the blue book, in the politician, in the bulletin, and so forth, in American-Opinion Magazine, in which you get a very clear picture of the mentality of the man who considers himself the Fuehrer of this monolithic body, as he calls it.

The two most important items are those three setting up fronts and the role of fronts, and imitation of the Communists, incidentally, and then the attack on democracy as a deceptive phrase, a weapon of demagoguery,

perennial fraud, and so forth.

Q How is this germane to, this doesn't deal with the Institute For American Democracy, does it?

A No, this is the hard core idealogical center of American Right Wing, or more precisely, American Fascist thought.

Q How is this relevant to what you said about Buckley?

A I think we need to get a picture of what the Right Wing complex is like at the core as well as in the various satellites or sympathizers, even.

Q What relevance can be derived from this passage here, these passages that you have marked about fronts: "We would organize fronts, little fronts, big fronts, temporary fronts, permanent fronts, all kinds of fronts. The Communists have been far smarter than we. They would never think of setting up publicly, for instance, a committee to promote Communism. The most effective front o either side are ad hoc committees aimed to accomplis or at least publicize one particular purpose. And again the front purpose like a lot of techniques the Communists used can be made to cut both ways."

What is the relevance of those passages to the statements about Buckley?

A There is no literal relevance. The relevance is in the book. The book was written as an effort to show that the Left Wing and the Right Wing totalitarian machines are much more like each other than Liberals or Conservatives sometimes wrongly assume.

In other words, Liberals and Conservatives have more in common with each other than they have with either one of the hard core.

The second point is, the National Review has on a number of occasions featured the good works performed by various John Birch Society fronts. Wittingly or unwittingly. This was one of the things that made me think there is a sympathetic note there on the part of the editor of the National Review.

Q Did you believe that National Review was or might be a front for the John Birch Society?

A No. I believe that a real Conservative, like a real Liberal, should never do anything to help or assist fronts of either the Right Wing or the Left Wing.

Q Did this contribute to your doubt whether Buckley's break with the John Birch Society or his condemnation of the John Birch Society in 1965 was genuine?

A Not specifically, no.

MR. MAHONEY: I offer 102, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 102 received in evidence.)

Q Would you identify 103?

A 103 is a sheaf of papers from my seminars and writings on totalitarism as basic materials to show what I have been doing academically on extremism and radical right, radical left, and the specifics, totalitarism in the Twentieth Century, and so forth. I think they demonstrate very clearly, as some dozens of articles which I have written do, that I have made as vigorous an attack on the radical left as I have on the radical right, and that is overt information which anybody who shows reasonable care can easily lay his hands on.

MR. MAHONEY: I offer 103, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 103 received in evidence.)

Q Can you identify 104?

A 104 is a sheaf, a Xerox of materials having to do with the launching of IAD and my chairmanship of it and the -- I think there are two different things here, Mr. Mahoney.

Q Let's separate them out.

A Yes. I think those things go together. Let's take this, then, because this is what I was talking about.

Q What are you talking about?

A I am talking about this.

Q Just a minute, because I think some of this is already in.

(Pause.)

Q I ask you to identify 104, Dr. Littell.

A Thank you. This is a Xerox of some selected reviews of the book Wild Tongues done by academics and church men, Liberals and Conservatives, and it illustrates what reasonable people of the public for whom the book was written think it did and failed to do. And to me the interesting thing was that I have yet to receive a review which mentions Mr. Buckley, although they do pick up some other things where they feel that I have done a poor job or a good job.

Q You say selection of reviews. About how many reviews were there other than the ones that are here?

A Well, I am not sure. It's surprising, but I have discovered you don't get all of the reviews on your own books. Most of them are simply little scribs like that, more announcements than reviews. I think those would be the major ones that we might call reviews.

Q Just to go through this one as to where these appear, what is this first one here, Also Warns Of Peril From Wild Tongues; what is that publication?

A That appeared in the St. Cloud, Minnesota, Tribune.

Q Do you know whether this was reprinted in any other newspaper or whether it is just a --

A No, I think it is some local preacher or something who picked it up.

Q This is one of the Journal of Ecumenical Studies. Can you tell us what that publication is?

A This is a publication quarterly, under the Catholic and Protestant auspices, which goes mostly to people who are interested in ecumenical and inter-church cooperation, ecumenical affairs. Mostly scholars.

Q Is it an important journal for people who engage in studies of this nature?

A I think so.

THE COURT: Have you seen any reviews that mentio Mr. Buckley? Do you know of any?

MR. BLASBAND: I know of none, your Honor, no.

MR. MAHONEY: I do not know of any.

MR. BLASBAND: Your Honor, may I go off the record, please?

THE COURT: Yes.

(Discussion off the record.)

MR. MAHONEY: We don't have those publication figures on the record, but we will stipulate to that later.

THE COURT: Fine.

MR. BLASBAND: We are going to stipulate also as to when the book stopped being published.

THE COURT: Right. All those facts.

Q This next one, I think it is Eternity, Philadelphia, Pennsylvania?

A Right.

Q What is that publication?

A That is a Conservative religious journal.

Q Who puts it out?

A I think it is an independent group. It's not a denominational journal. I believe it is published by -- I think it supports itself, it's an independent journal.

Q Once again, is this a significant publication in the areas for people concerned with this area of scholarship and inquiry?

A Well, they would certainly feel it. It's not one of the most significant religious journals in the major denominations. It's more, it has its own constituency of --

THE COURT: I think we are getting off the subject.

Q The next, The New World Outlook, can you tell us about that publication?

A It is New York City. I was trying to think whether it is -- it is the Catholic World that John Shearon was editor of.

Q Do you know W.W. Reed, the reviewer?

A No.

THE COURT: You are not sure what The New World Outlook is, right?

THE WITNESS: Right, I'm not.

Q Do you know how this review came to your attention?

A I think it would probably have been sent to me by the publisher. That is the way you usually get those things, although sometimes the journal does it.

Q This next one, The Catholic News, can you tell us what that is?

A It says it is a New York weekly Catholic newspaper.

Q Do you know whether that is a publication of the Archdiocese of New York Official Publication?

A I do not know.

MR. MAHONEY: Can we stipulate that?

MR. BLASBAND: I don't know, Mr. Mahoney. I am not familiar with its publication. But if you want to tell us --

MR. MAHONEY: To my knowledge, I will represent that it is, yes.

MR. BLASBAND: I will accept Mr. Mahoney's representation.

BY MR. MAHONEY:

Q And then in next review by Nesmith, or this next article, what is that?

A That is from a journal called Response, which is a -- it's not longer in existence under that name. It's now called Engagement. It is the Journal of the Board of Christian Social Concerns of my Church, the United Methodist Church. And Dick Nesmith is one of our staff people.

Q Is that a national organization?

A Yes. It's an agency of the church.

Q Now this letter to Martin Marty, can you tell us who he is?

A Yes. Perhaps I could link the two together. It is followed in the sheaf, a review which was published in The Christian Century, December 17, 1969. It is a

review by a young Leftist instructor in a college somewhere in New England, and it attacks me very bitterly --

THE COURT: That is the review in the Christian Century?

THE WITNESS: Yes. Which is an important journal. It attacks me very bitterly for what it calls the mind set of J. Edgar Hoover because of what I said about the violence attending some of the peace demonstrations, and so forth. I wrote Martin Marty, who is a friend of mine, and associate editor of The Christian Century, and said that after my experience in this organization fight since the thirties, I deserved a review by somebody who was not so idealogically corrupted as this man, and who had some technical competence to point out where it was good and where it was bad really, rather than on a sheer ideological attack.

I also concluded by saying whatever J. Edgar Hoover's faults, of which longeivity might be one, he was not a fool when dealing with extremists.

Q And then this next Engagement, tell us about that publication.

A Engagement is a Christian social concerns publication of the United Church of Christ.

Q Is that a Methodist church?

A No, that used to be congregationalists, and they united ten years ago or something. It has Methodist sponsorship, too.

Q Would you regard that as a significant publication?

A It is an important denominational journal. The pastors read it.

Q The Protestant pastors read it?

A Yes, some.

Q The Lutheran, would you tell us what that is?

A The Lutheran is a denominational journal published by the Lutheran Church in America.

Q Is that nationally circulated, The Lutheran?

A Yes, sir.

MR. MAHONEY: 104 is offered, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 104 received in evidence.)

BY MR. MAHONEY:

Q Can you identify 105?

A 105 is a Xerox of a ~~group~~ Group Research of research reports dated November 30, 1966. It is the front page announcing the launching of the Institute For American Democracy, with myself as chairman.

Q What is the pertinence of 105 to the issues in suit?

A That is part of sever l documents we have, like D,X,U and Z. It is of the same time, practically, announcing the launching of the organization.

MR. MAHONEY: I offer 105, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 105 received in evidence.)

BY MR. MAHONEY:

Q Can you identify 106?

A 106 is a Xerox of a news item like quite a numbe of them, I suppose, which I picked up on a trip. It is from the Houston Chronicle, November 20,1966; also the story of the launching of IAD.

Q Aren't there two articles there?

A Excuse me, right. On the right side is a story from the Houston Chronicle. On the left side, under date of November 24, 1966, is a similar item from the Jewish Herald - Voice, also of Houston, Texas.

Q like 105 this further reports on the formation of IAD?

A Right. For information on the launching of IA

MR. MAHONEY: I offer 106, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 106 received in evidence.)

Q Dr. Littell, we have concluded with all the documents you have brought into court. Do we now have in evidence every document on which you relied on the statements which you made concerning Mr. Buckley or pages 50 and 51 of Wild Tongues?

A No, but we have in evidence everything which I intend to enter or can find at the present time. I have already described, well, you know, my circumstances. The second point which I think you will agree we want to be sure of is that in the exchange of discourtesies, as I called it, between Mr. Buckley and myself, I think we want to be sure that all those items are in. I think they are.

Q They are in, but I am talking about --

THE COURT: I think they are.

THE WITNESS: I am not sure, but what there are two items still missing, which I have on my list.

Q What would those be?

THE COURT: You check that with Mr. Blasband, because we certainly want to have those. If there is anything else, he has those exhibits, right?

MR. MAHONEY. I think they are also attachments

to the stipulation. I am sure they are in in both forms.

THE WITNESS: I couldn't find them in my set. That would be the only exception.

THE COURT: If there is any checking, you work that out with counsel.

BY MR. MAHONEY:

Q In any event, you have no further evidence to offer with respect to documentary support for what you said about Mr. Buckley; is that correct?

A Right.

Q Dr. Littell, why don't we proceed at this time to whatever you have on your pad there about the relationship between the National Review and Mr. Buckley following a line fixed elsewhere with respect to IAD; is that what you are prepared to do now?

A I have three things which seem to me important, if I understand where we are. One is a simple chronologic story which could be told fairly quickly, it illustrates or tells why I was convinced that the attack in the National Review from Mr. Buckley was part of a syncopation all through the radical Right. There are substantive issues, this has to do with timing and target, and I don't think it was accidental. And the second item has to do with what you might call textual criticism. It is an identification

of certain phrases and certain bits of information, some of them imagined, fabricated, which appeared simultaneously in several journals, including the National Review. And I think I can show who took it from whom. So that is the second major task to which of course you can devote a semester, or you can devote 15 minutes. It depends on your will.

I am prepared to go into it in as much detail as you care.

THE COURT: I do not know which semester.

THE WITNESS: I am simply illustrating the problem. When you do it properly with texts, you have a projector and you have some of them marked yellow and some of them marked red and some of them blue overlays, and so forth, and you can see in a minute by the word and the rest of the --

Q We will be able to follow you, Doctor.

A Okay. And then the third thing, which also can be done in 10 minutes, 12 minutes, I believe, if I may have a blackboard, which the clerk, not the present clerk, but the other gentleman said could be easily supplied --

THE COURT: We will get you a blackboard.

THE WITNESS: Is a definition of exactly what I mean or what I understand when I say Fascist or Right Wing or radical or ultra-Conservative, Conservative or Liberal

Progressive, and so forth. I think that it would be only fair, since we have had the opinion of all kinds of persons, if I would have a chance succinctly and briefly to state what I thought I was saying. And then you can point out where I didn't get it said, or whatever.

THE COURT: Okay.

BY MR. MAHONEY:

Q Let's start with one, the timing and target analysis.

THE COURT: What would help me, on these last exhibits, I don't know that we have a bunch of extra copies but I'd like to take the time even if it means interrupting you, to look at the things you are referring to.

THE WITNESS: I think I have the numbers on most of them, but I didn't get all of these that we put in the last.

THE COURT: All right. You go ahead.

A This is the way I experienced it, and what led me to include that section as part of the general description.

Q Include what section? I am sorry, I just want to be sure we are clear.

A The one in dispute. In other words, the illustration to use Mr. Buckley as a fellow traveler.

In November of '66 --

Q I am sorry. You say this letter; was this your exclusive reliance in this regard, or was that all you are relying upon to describe Mr. Buckley as a fellow traveler?

MR. BLASBAND: I do not think that is fair.

THE COURT: I do not think that is a fair question.

THE WITNESS: What I am doing is of course organizing things which were rather inchoate at the time. I didn't have this in front of me.

THE COURT: Just go on.

A On November 18 of 1966 the Institute For American Democracy was launched in Washington, D.C. in a public meeting which I chaired. And my national chairmanship was announced along with a set of sponsors.

The purpose of the organization is indicated in documents of DXU, DXV and then I think some other -- they were given in those news stories which we looked at, which is to fight extremism of the Left and Right, and particularly the radical Right, which is bourgeoning.

In December of 1966, that is, a relatively short time later --

THE COURT: I am sorry. December, '66?

A Yes, a relatively short time, an attack, the

first overt attack was made in the John Birch Society Monthl Bulletin. This we have in evidence now from this last series.

THE COURT: 77, right?

Q Is that what you are referring to, Exhibit 77?

A Yes.

There followed within a matter of days attacks in dozens of newspapers and journals and radio broadcasts all over the country. It was like one of the games in an amusement gallery, where, you know, all the lights go on all over.

One of those attacks came January 10, 1967, in the National Review.

THE COURT: That is Plaintiff's Exhibit 75. What were some of the others? You say dozens. Just tell me all of the ones you can remember specifically.

THE WITNESS Well, when we met before I had three big packages I brought in, and I thought, well, I won't bring them back. But they would include Dan Smoot's Lifeline, Billy James Hargis, of course, with his newslette and magazine, Carl McIntyre with his new reformation newsletter, Ken Courtney down in New Orleans -- what is it -- the American Independent -- he has a newspaper.

THE COURT: You said newspapers. I took it to me

THE WITNESS: Newspapers, magazines, radio broadcasts.

THE COURT: Not just these radical Right things, but newspapers like the Post or the Times or --

THE WITNESS: Oh, yes. There are many of them that carried the straight story on the launching.

THE COURT: Were there attacks in any regular newspapers, and I mean attacks?

THE WITNESS: Not except people who have their own newsletters, like Smith, Hartis, McIntyre, and Courtney, from people like Sulzberger and Reston and, you know, the columnists in the Post, and so on.

THE COURT: Did any syndicated columnists or regula columnists in regular newspapers attack you?

THE WITNESS: No. Mr. Buckley was the only one of whom I would have expected better; put it that way. But there are columnists in local papers, you know, you pick things up from Houston, Dallas, Victoria, Texas, Phoenix, Arizona. I can have them here tomorrow night, but I know know whether they want to spend that kind of time.

I have a file of literally dozens of clippings and pamphlets and one-page throwaways, and I brought the more substantial ones, namely, the Cotten and Hargis and so-forth.

THE COURT: But of what we could call responsible columnists, Mr. Buckley was the only one who attacked you; right?

THE WITNESS: Right.

MR. MAHONEY: At this time, your Honor, all we have is an unsigned editorial.

THE COURT: I am just getting his testimony.

MR. MAHONEY: He is talking about this contemporaneous period, there is no evidence that Mr. Buckley said anything about him during this period.

MR. BLASBAND: I think that is argument which I disagree with.

THE COURT: You go ahead with your chronology. This is all the period in late 1966 or early 1967.

THE WITNESS: Right. This is when the avalanche came as I experienced it, which included among other things shooting through our living room window and my wife nearly being killed, and it included my having to take an unlisted telephone because of obscene and threatening telephone call to my wife and children, and it included literally dozens of published items in Right Wing magazines and columns. It included broadcasts over Hargis's radio chain. He always claims he has more stations than he has, but he is supposed to have 200. Continual broadcasts over Carl

McIntype's chain. He claimed at one time 700 and something stations. And everybody else I was into the White Wing phalanx. Not one of them missed it. They used language and phrases and invented charges, and so forth, which you don't create. I mean, you don't say that so-and-so is a disciple of Harry Ward and a Communist fellow traveler for 20 years without somebody's having made this up, and then when it is said in the same language by 20 other people, you know they got it from somebody. You don't create that out of your head. It's something which can be located.

Anyway, January 10, 1967, then came the first National Review attack, which was paralleled by a similar attack in Edgar Bundy's News and Views, also January, 1967. On August 15 of 1967 --

THE COURT: Wait a minute. Have you got the Bundy item in evidence?

THE WITNESS: I put everything in that I thought important on Bundy.

Q Is this what you are talking about?

A Yes.

THE COURT: That is 92.

THE WITNESS: I was aware even at that time of Mr. Bundy's particular connections with Mr. Buckley. Then

August --

THE COURT: What are those, you say?

THE WITNESS: Mr. Buckley had on different occasions praised the work of Edgar Bundy and the Church League of America. In fact, in this room he did so and also expressed his confidence in the work of the widow of J.B. Matthews who is one of Bundy's staffers out there in Wheaton, Illinois, and who was associated with the famous Mercury attack on the churches at the time that Mr. Buckley was on their editorial staff.

We will see that in the first place, the Church League of America is ultra Right Wing, to say the least; and Bundy is used extensively by the John Birch Society in its lecture circuit and various public appearances. The function of the Church League of America is to attack the ecumenical movement and particularly the American Council of Churches. This is the particular role which it plays.

August 15, 1967, there was a short attack on me in the National Review, misquoting me by attributing to me things said by Mr. Gaskie. This is Plaintiff's Exhibit 14.

Q Mr. Gaskie, just to keep this clear as you go along, he is not in the radical Right, is he?

A I don't know. I think it would be interesting to know, but I haven't had time to track that down.

Q Is he a newspaper reporter, so far as you know?

A All I know of him is that by-line which appeared in the Twin Cities.

THE COURT: That exhibit is what?

THE WITNESS: Plaintiff's Exhibit 14. That is the Gaskie thing, I guess. I wonder what the number of the National Review is.

(Pause.)

THE WITNESS: Right, it's Plaintiff's Exhibit 14 and the Gaskie item is Plaintiff's Exhibit 16-B.

But, anyway, the National Review item quoted Gaskie and attributed it to me.

Then, November 21, 1967, I wrote a letter to Mr.Buckley enclosing the paper which had not been given, the NEA thing which we have referred to many times, and this was on the encouragement of mutual friends who thought, you know, we should be able to reach an understanding.

Q Is this letter in evidence?

A That is what I have been asking.

MR. BLASBAND: Is that the handwritten note?

THE WITNESS: No, no. This is a letter which I have this copy of here.

THE COURT: It looks like January 14, 1968. That says, "I am enclosing the paper which I prepared for the NEA meeting."

Had you sent it before that?

MR. BLASBAND: Evidently, your Honor, that is what happened. Better mark this for identification.

THE WITNESS: You have a carbon there. You see, we have been referring to the Gaskie thing in a way which didn't sound quite right, but when I started laying it out, there are two references to Gaskie.

THE COURT: All right.

xx (Plaintiff's Exhibit 107 marked for identification.)

THE WITNESS: We need to get copies of that, because I thought we had agreed that everything was in, but when I saw that I wondered if it was in, because we hadn't talked about that. You haven't seen it before?

Q I have never seen it before.

THE COURT: We will now take our break until 2.15.

(Luncheon recess.)

AFTERNOON SESSION

2.30 P.M.

THE COURT: What is the date of 107?

MR. MAHONEY: November 21, 1967.

THE COURT: From Dr. Littell to Mr. Buckley?

MR. MAHONEY: Yes.

THE COURT: Is anybody offering that?

MR. MAHONEY: Yes, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 107 received in evidence.)

F R A N K L I N H. L I T T E L L, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q Dr. Littell, was this letter mailed to Mr. Buckley?

A Yes. It was mailed from Mount Pleasant.

THE COURT: Does Mr. Buckley have the original?

MR. MAHONEY: I just got him for the first time on it. What he told me, your Honor, is that the volume of incoming mail that he has is such that not all of his mail comes to his personal attention, and they had never seen the letter before because it would have been implausible for him to write in January, '68, asking for a copy of the speech

if he had received this letter which encloses a copy of the speech. He has no recollection of the letter. He is now checking the National Review, he has his secretary checking the National Review and at Yale, to see if there is any copy of it in any correspondence at National Review for him.

The middle initial is wrong, but it is correctly addressed to the editor of National Review at the proper address, so presumably it should have arrived there.

MR. BLASBAND: It is addressed to William R. Buckley.

MR. MAHONEY: But I wouldn't think that would make a difference.

THE WITNESS: Anyway, the occasion of this letter was that in conversation with mutual friends, specifically Joe Uihlien, of Milwaukee, and Will Herberg, I had said, it seems to me, Mr. Buckley, Bill Buckley is a fellow traveler or playing footsie or something with the radical Right. And they said, no, you ought to check out with him --

THE COURT: You were in that state?

THE WITNESS: I had reached the conclusion --

THE COURT: As a result of what? As a result of that article in the National Review?

THE WITNESS No, I had reached the conclusion

over a period of three, four, five years, in my seminar, and so forth, that Mr. Buckley was in the radical Right orbit and I was curious in trying to fill out my information and they said, no, that is not right, that he actually is trying to give a new birth to American Conservatism.

THE COURT: The other man besides Herberg was whom?

THE WITNESS: Joe Uihlien, Jr.

THE COURT: They said what?

THE WITNESS: They said no, that I was mistaken about Mr. Buckley; that he was trying to give a new impulse to American Conservatism. So I wrote a very diplomatic and deferential letter, such as you do the first time you meet a person, to establish some contact as it were.

THE COURT: That was November --

THE WITNESS: That is November 21, 1967. In which I enclosed the paper which was not given and hoped to receive a response in kind because it was clear to me that he was already picking up the radical Right attack on me and what I was doing.

THE COURT: How does that fit in with the hand-written note, Exhibit B?

THE WITNESS: That was later.

THE COURT: You go ahead with the chronology.

In other words, you didn't believe the statements that you made in the November 21 letter about him -- let me see that.

THE WITNESS: No, it was a very diplomatic letter, courteous, deferential, perhaps, even.

THE COURT: You say in the letter, "Since I appreciate some of the positions you have taken and especially your effort to maintain an honest and non-Fascist Conservatism," are you saying to me that you did not believe that?

THE WITNESS: No, I am saying that I was paying him a compliment appropriate to the first approach.

THE COURT: That isn't my question. I have to know, sometimes people put statements in letters they don't believe. I am asking you, did you or did you not believe the statement that I quoted to you?

THE WITNESS: I was willing to believe it, hoping to believe it, put it that way. I was being as generous as I could.

THE COURT: Was a recent newspaper column attempting again to distinguish between honest Conservatism and Fascist activities?

THE WITNESS: That I don't remember.

Q When you say attempting again to distinguish between honest Conservatism and Fascist activities, what

did you mean when you said attempting again? Why was that reference?

A I don't remember exactly but I suppose it would be to say to him that this is a necessary thing and I appreciate his trying again to make the point. Most important to the thing, as a matter of fact.

Q Were you aware that this was something that Mr. Buckley had been doing on more than one occasion, when you wrote this letter of November 21, 1967?

A It could have meant that either he was attempting again, which it probably did mean, or that he was trying something which some of us have been trying to do for some time. I am not sure on this point. If I had that -- apparently there was a newspaper clipping or something that I may have enclosed to illustrate what I liked about what he was doing.

Q Go ahead.

A Anyway, then on January 8, 1968, and that is a Plaintiff's Exhibit 16-A, Plaintiff's Exhibit 16-B, I received a brief inquiry from him enclosing the Gaskie, or a Xerox, perhaps, of the Gaskie clipping in which he said he was going to write a column on it. We have it in evidence.

Q To get the chronology straight, Doctor, was that after

you had sent him the handwritten note that is Exhibit B?

A The handwritten note doesn't have a date on it.

Q I know, but I am just trying to get your recollection as to when you sent it.

A I think it must have been, that handwritten note must have been sent in between my diplomatic letter of December 21 and his letter of January 8. That would be the most logical placement of it.

Then I wrote a personal note to him which you are now mentioning.

Q The handwritten note?

A Let us assume that it was after the November 21st letter. In that I made a personal plea, and I wrote "Personal," then underlined it, he should check with a couple of mutual friends before he had assumed -- was apparently assuming about what I was trying to do. I received no answer to either one of these.

Then January 8, 1968, I received the inquiry enclosing the Gaskie clipping or a copy of it, saying he was going to write a column, and please answer within a week.

On January 14, 1968, I sent a Special Delivery letter clarifying my own position and again enclosing the NEA paper, which was the draft for the speech. That is

Plaintiff's Exhibit 15-A and Plaintiff's Exhibit 15-B.

Q While we are on that, if we could ask a question or two. In this January 14 letter, I was just curious, why did you say he had written you on January 8th and made no reference either to your handwritten note or to your prior letter of November 21 or 2, and he had asked something in the letter of November 21. I am asking why on January 14 didn't you ask why didn't you get my earlier letters, and so forth?

A I am curious myself, now that I think about it. My fix at that time was very like his fix, as you say, for the college and for my seminars in Chicago, and so forth, I had two or three dozen letters a day, and I might have even forgotten that I had written him, for that matter. As I think of it, the same question arose in my mind, why did this slippage occur.

But, anyway, it did. Just like his inquiry of me on the basis of the Gaskie thing, although he had already published quoting from Gaskie and attributing it to me. Maybe he had forgotten. That is what happens when you are very busy.

Q Before you go on to the next correspondence, I want to ask you one or two questions about this letter of January 14, '68. You state,"I protested the report in

the National Review because although I consider it an honor to be attacked by the extremists of the Left and Right, I had considered you and your journal a considerable cut above. Sometimes your comments reveal ideological taint, but this is a very general malaise today, even among decent people. I have taken pains in response to questions in public lectures to distinguish your work from that of the Fascist, and I think if you are truly a Conservative I think you will agree that I am entitled to the same trouble."

When you say "I have considered you and your journal a cut above the extremists of the Left and Right," for how long had you held that opinion"?

A That of course is reaching out a diplomatic hand in an effort still to establish some kind of understanding and approchement where he wouldn't judge me in a highly prejudicial way and I would have an opportunity to discuss what I am, what I was doing, and he with me. I was beginning to have some misgivings about whether I was right in the first place, and my friends were wrong. I was giving it another try, as it were.

Q You go on here, and here you are describing not your state of mind, but mass conduct. I have taken pains in response to questions following public lectures

to distinguish your work from that of the Fascists.

Over what period of time had you been doing this in questions following public lectures?

A Whenever I got any -- still do -- whenever I got any questions I try to point out saying well, what about William Buckley, I try to point out that he is a much more serious and higher level person than McIntyre or Hargis, or people like that.

Q How long had you been making that point, when you were asked?

A I became chairman of a committee on extremism set up by the bishops of my church in 1964, and from 1964 to '69 I had lectured an average of two times a day. At least half of the lectures being on problems of extremism, all over the country. Preachers' conferences, district conferences, area assemblies, and so on and so forth. And every now and then this question would pop up.

Q And did you typically when you lectured have a question period after the lecture?

A Always.

Q Was that throughout that entire period, was this the answer you were -- your standard answer on the Buckley matter whenever it came up?

A It didn't come up always, you know.

Q No, but whenever it did during that period.

A And I never used him as an illustration in my public addresses because I still, even today, I think it would be somewhat ambiguous, but at that time I really wasn't clear as to what his role in the function was of this whole radical Right complex.

I reached the conclusion that he was swinging in the orbit pretty clearly, but my basic attack was on the John Birch Society -- as far as the Right was concerned, was on the John Birch Society and on its various fronts and people who clearly were following the line, like Hargis and Bundy, and so forth.

Q Over this five-year period starting in '64 and running to '69 would you say that the subject matter that you were lecturing on was essentially the same subject matter that you wrote about in Wild Tongues?

A Yes.

Q Over that five-year period when Buckley's name came up from time to time in these lectures did you ever describe him as a fellow traveler of the radical Right?

A I don't think that I ever did.

Q Did you ever say in your lectures over this five year period, did you ever say that he was given to personal attacks on people?

A I don't know how much I can remember of -- you are asking me what I did say in the heat following a lecture on a question. All I remember for sure is that I have already ascertained that he was a higher level brain and undertaking than McIntyre, these people, I never used him as one of the major illustrations of the problem because I don't think that is the story.

Now, whether I ever in response to a question said -- I'm sure I may have said, well, I think he is playing too close to the radical Right, because I knew that he had appeared on platforms with people like Oliver and Welch, and so forth, who were obviously extremists, but I just wouldn't say out of memory, you know, in this case I said this, or this or this.

Q Did you ever in any of these lectures over the five-year period or any of these question periods, did you ever say in substance what you said on page 51, "The National Review and its syndicated newspaper column On The Right frequently print news items and interpretations picked up from the openly Fascist journals and every important and useful agency for radical Right attacks on honest Liberals and Conservatives"? Did you ever state that in discussing Buckley, at any of these lectures?

A I am sure I may have said that his relationship

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to the John Birch Society and to other radical Right persons and organs was a puzzle to me and I didn't like it. Whether I used that frame of words, I don't know. I don't think so, but I'm not sure.

Q These words I just quoted?

A That's right. I don't know.

Q Did you ever say in substance that Buckley has been sought out for misquotation, with quotation marks, and for repeating radical Right malice and rumor, but he never admits a mistake or apologizes to the victims?

A I certainly didn't use that literal language.

Q No, in substance?

A I'm sure that one of the points I made was that my professors -- one of the points he made was that he was careless with the evidence. I certainly told somebody it some time or other, maybe several times, that my professors assured me he had maligned my alma mater and I may even have told the story as I understand it, of his performance at Yale. I would think that would be -- it would have been fresher then than it is now, certainly.

Q Did you ever in the course of that five-year lecturing effort say in substance, like Westbrook Pegler, who lied day after day in his column about Quentin Reynolds and goaded him into a lawsuit, Buckley could

be taken to court by any one of several people who had enough money to hire competent legal counsel, with or without a reference to Westbrook Pegler or Quentin Reynolds, did you ever say that in substance about Buckley?

A I may have said that he had an obsession about certain people like the Kennedys or Martin Luther King, Jr., and he was hounding them at every opportunity. That would be reasonable. But we are speculating now because I really don't remember something I can say, this is what happened.

Q When did you have your conversations with Uihlien and Hrberg?

A I saw Joe Uihlien pretty regularly. He is a very dear and old friend. When we went West we'd stop in Milawaukee and visit with him a day or two before going on. So it could have been -- it was probably 1966. But it could have been the summer before, '65; I am not sure.

Q And you talked about Buckley at that point with Mr. Uihlien?

A We talked about him several times, yes.

Q How often did you talk to him?

A The Mrs. also. She was much more enthusiastic

about Buckley than Joe was.

Q How many times would you say you discussed Buckley with him?

A Oh, at least a couple of times. It may have been mentioned at other times, but a couple of times.

Q Was it an extensive discussion?

A Joe Uihlien was a Yale man also and probably the first time it came up, that connection with, what do you think of this attack on Yale. Because this would be led then into other discussions. I don't mean to say we sat for 45 minutes discussing Bill Buckley. But at the dinner table and discussing, you talk about a lot of things and at least a few times I indicated my misgivings about Buckley's growing role, and Joe said at some point, "Why don't you write him?"

Q Let's try and place this a little more clearly.

A I said I don't know him --

MR. BLASBAND: Could we answer the question, please?

MR. MAHONEY: I am just trying to get this placed a little more clearly as to chronology. What did you say when he said, "Why don't you write him?"

A Several months before I did in fact write him.

A That would be '68 -- I am sorry, '67?

A I wrote him first November 21, '66. So it could have been the summer of '67. I am not sure. I have lectured in Milwaukee a dozen times and I'd raise it at least half the time when I was in Milwaukee. I could have been there in October, '67, and then as soon as I got home, dictated the letter, I don't know. But it was on his suggestion also I had talked about Bill at some point or another.

Then I would say, "Well, maybe I shouldn't leave the doubt open and find out whether my conclusions were as wrong as these friends thought they were."

Q What was the substance of your discussion with Herberg with respect to Mr. Buckley? What was the substance of them, as best you can recall?

A I was sailing, I have always discussed this rather frankly, the political theme with him because he is interested in Germany and all kinds of things. I was discussing things, he helped to finance the Freedom Institute which I set up, for example. I was discussing this whole question of totalitarianism, its nature, the way in which people get into the nature of the Totalitarian Party, and so forth. And somewhere at this point the question came up, maybe he said, "What do you think of the National Review?", and I probably said, 'I don't like it,"

or I have got doubts about it.

Anyway, the question came up in which I said that I had misgivings about William Buckley. And he seemed more surprised and he said, no, he thought he was trying to do an honest Conservative thing. In any case, he said, "Why don't you write him?"

After a time lag of, I don't know how many or how few weeks, I wrote as diplomatic a letter as I could.

THE COURT: Didyou outline the nature of your misgivings to Mr. Buckley?

THE WITNESS: I would have said, yes.

THE COURT: What did you say?

THE WITNESS: I have been watching his line on different issues and how he had appeared on the platform down in Chicago with Welch and Oliver and Courtney, and so forth. I wanted to know, I reached the conclusion that he was in the radical Right and I didn't like it, and Joe Uihlien said no, that he was trying to give a new impulse to American Conservatism. I remember that. So I don't know whether we talked for 15 minutes or 10 minutes or a half an hour. I don't think we spent more than a half-hour talking about it, because we talked about all sorts of things and in a living room discussion you don't dwell on things the way you do in a committee meeting. In any

way, I reached the conclusion that I should at least leave the door open. But I was wrong.

Q What was your reference to appearing on a platform? When did that occur? You said one of the things that bothered you was that Buckley had appeared on a platform with Welch and Oliver?

A We have a document in evidence, an early one, which reports on his platform performance in Chicago, along with Oliver and Robert Welch and several others. He was the only non-Birch Society person on the platform.

Q Do you have any more specific reference to that?

A Anyway, this is the kind of thing I'd remember. That is why I had doubts. It's in one page in Danger On The Right. I entered it as a handwritten note which I had dropped into the folder of William F. Buckley.

Q We can track that down and get back to that. While we are doing that maybe you could tell me about your conversations with Will Herberg on this subject. When did they occur, on the subject of Mr. Buckley?

A Yes. I don't remember except that it was after Anna, his wife, had died. I visited him in Madison at Drew University.

Q Drew?

A Drew, yes. I was speaking there for a Methodist

conference --

THE COURT: University of --

THE WITNESS: Drew University. He is a Professor there. I hadn't seen him for several years, although we exchanged notes and reprints. We have been friends since the 1930's.

THE COURT: This was about when?

THE WITNESS: Well, it was after his wife died.

Q When did she die, do you recall this?

A No, if I could, I'd do a better job. I spoke to the North Jersey Methodist Conference. I was still president of Iowa Wesleyan at that time. Or maybe had just become president. It was probably in the fall of '66, but I'm not -- you know, a year or two, I can't do anything about it.

Q Where did this take place? Was it at his home?

A We met on the campus and walked down to a coffee shop two or three blocks from campus, and visited for two and a half hours, I guess.

Q Buckley's name came up in the course of that discussion?

A Right.

Q What was said about Buckley in that conversation?

A Bill was writing for the National Review, and he is one of the people that I admire greatly. And I referred to his connection with the National Review, and I said, "What's going on here," and told him undoubtedly my feelings that this was a highly improbable position, and that I had misgivings about Buckley's world in relation to the radical Right. He then again said, no, I was wrong, that I had misunderstood the thing, and we probably -- well, I'm sure we argued about that for a little while, the way you do. But that was the other contact that made me think, well, to be absolutely sure. What I am doing and in the principle I should make the contact.

Q With Buckley?

A Right.

Q Did you ever discuss Buckley on any other occasion with Professor Herberg?

A I don't think so. Our paths haven't crossed personally that much in recent times. He's been very ill.

Q I ask you to look at page 160 of Danger On The Right and tell me whether that refreshes your recollection as to when there was a rally where Buckley appeared with Courtney and Robert Welch?

A Right. I think that is right there.

Q When was that rally?

A Well, it says in 1959, his new party rally at Chicago, and so forth. It was Courtney who set it up.

Q Was the John Birch Society a public organization at that time?

A I don't know whether it's a public organization today.

Q Was it a public organization then in the sense in which it is today, in the sense that it has a bulletin that Welch was known as the head of it, and so on and so forth?

A I'm sure -- it was supposed to have been founded in July of 1958. I think the first public notice, really, came along was that series of articles that the Los Angeles Times published, exposing the Birch Society.

Q When was that?

A Then The Politician was circulated as a personal letter, although a kind of a book at first, published as a book, heavily excerpted.

I'm not sure of any of these dates, you see. But I'm sure that I remembered these people at the time that I was writing the book or at the time that I was writing these letters, which is practically the same time. My misgivings about Mr. Buckley's ideological politics had developed over a period of time up to that point. I'd say five or six years .I was aware, maybe seven years.

And with increasing conviction on my own part that his role was that of a fellow traveler at least of the radical Right. I wasn't sure of the nature of his role.

Q. Why don't you come back now, we did a flash-back from January 14, 1968. Why don't you pick this up in your chronology?

A Right. Then I tried again on January 14, 1968, with a Special Delivery enclosing the NEA address, not given but prepared draft, and explaining again my understanding of the nature of Liberal and Conservative common interest against extremism; and we have this as Plaintiff's Exhibit 15-A and 15-B.

Q What next occurred?

A Then some place here I wrote a letter in which I said I still haven't received an answer. That is the other thing that I am not sure is in evidence. Do you recall that?

Q Yes, I have never seen this document.

A This is -- no, I have it. It's okay. Plaintiff's Exhibit 17. Under date of February 14, 1968; I said -- I started out, "I have not received an answer to my letter to you under date of January 14." So that is what I was thinking. There was nothing we have missed.

Q So it's Plaintiff's Exhibit 14?

A Yes. And --

THE COURT: Let's look at the February 14th letter. By that time you had received a column, right?

THE WITNESS: Right.

THE COURT: What column is that?

THE WITNESS: Right.

THE COURT: Is that the one, "Who are the totalitarians?"

THE WITNESS: Right. There was released, February 10, 11, a Buckley column attacking me on the basis of the speech which was not given, "Who are the totalitarians." It was given different titles in different newspapers, but that is what he called it and what I later got in mimeographed form, in which he praises the Church League of America for its exposure of me and IAD.

I knew that he had the copy of the speech, even though again there were misquotations. And I had twice written in as diplomatic a way as I knew how to say, "Look, check it out; don't jump to conclusions."

And the thing which amazes me to this day is how did William F. Buckley, Jr. conclude that I was open -- it was open season on me, if he hadn't read some things which he obviously had read.

Q What are you referring to, Doctor?

A In other words, when I asked here in the room, do you normally address members of the clergy in that style language, he said no. Well, what made me an unusual case? Obviously, he had concluded on the basis of something that he had read, that I was "a Pink or Liberal or Com Symp" --

Q Did he ever say that?

A Why else would he give me special treatment?

Q He has to write 300 columns a year, Dr. Littell - now we are getting our roles switched.

A Does he pick every clergyman that comes along and declares open war on him? Somehow or other he identified me as fair game.

THE COURT: What was going on in other publications at this time that you feel fits in with your target and timing? Anything?

THE WITNESS: Oh, yes. That is the second sheet here. Let me lay it out. So at that time I reached the conclusion that I had been right in the first place and my friends were indeed wrong.

THE COURT: After Who are the Totalitarians?

THE WITNESS: Right. After he published something which he knew was false.

THE COURT: What conclusion did you reach?

THE WITNESS: I reached the conclusion that he was indeed a fellow traveler of the radical Right; that he was singling me out like the rest of the boys for attack, however unfair, and which he knew to be false in part; and that I had been right in the first place, and that Uihlein and Herberg were wrong in encouraging me to think that I should try to build bridges.

Q How did you conclude that he published something he knew to be false?

A Because he had the transcript of the speech not given and given, and he still went ahead and used quotations from Gaskie and attributed to me at least one phrase which I didn't use in the speech, namely, "spiritually underworld."

Q Fascist underworld, you mean?

A Fascist underworld.

THE COURT: In "Who are the Totalitarians" column, about you was false?

THE WITNESS: We are going into the exegesis of the situation.

THE COURT: Let's defer that.

THE WITNESS: I would prefer that. We are pretty near through with this stuff, and then we can take up the

content quesetion, because right now I am just talking about timing and target.

THE COURT: All right.

THE WITNESS: The question is, why was F.H. Littell, who was completely unknown, selected for such special treatment? What made him feel it was justified, and so on.

Anyway, I wrote them a very strong letter in which I said that he had broken the rules of the dialogue and I thought his action was contemptible. The executive secretary of the Institute For American Democracy, Charles Baker, wrote him a letter protesting the column in the name of the IAD and calling for the rectification, and Baker got a letter from Buckley refusing any corrections. And I have that document from Baker, that is on the margin there some place.

Q Is this a document from Baker?

A That's right.

MR. MAHONEY: Mark this 108,please.

xx (Plaintiff's Exhibit 108 marked for identification.)

Q Was there correspondence between Buckley and Baker?

A Baker wrote Buckley a letter under date -- no.

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And he got an answer back on February 28, 1968.

THE COURT: Is 108 the Baker letter?

MR. MAHONEY: 108, which I am seeing for the first time today, is a statement issued by the IAD, by Mr. Baker.

THE WITNESS: Baker wrote a letter to Buckley protesting the attack on the Institute and on me. He got a reply back from Buckley, 2/28/68, refusing correction. He then --

Q Do you have that correspondence?

A No.

Q Is that available?

A It is in Washington, D.C., in the organization office.

THE COURT: But you do have the statement?

MR. MAHONEY: Yes.

THE WITNESS: And then Mr. Baker prepared a statement responding to this situation, and I have that cop of that.

THE COURT: Let me get this: Baker wrote Buckley a letter, what date?

THE WITNESS: I don't have the date of the lette but it was February of '68 after the attack.

THE COURT: The Who are the Totalitarians?

THE WITNESS: Right.

THE COURT: And then Buckley wrote Baker?

THE WITNESS: Buckley wrote Baker refusing to correct. The date of the Buckley letter to Baker was February 28, '68. And then Baker prepared this news release which he then gave as widely as he could get it accepted.

THE COURT: Let us take a break now.

(Recess.)

Q Referring to this which has been marked 108 for identification, is this the news release you are talking about?

A Well, it's a copy which I received later from the office in -- I mean, some days or weeks or something after it had been put out, along with other stuff of course from the office in Washington. And it -- that is, I didn't approve it, it was Mr. Baker's statement. And it came after that column to which we have referred.

Q After the February 14 column?

A Right.

MR. BLASBAND: Can I see it, please?

(Handed.)

(Pause.)

Q At this time Baker was the executive director,

and what was your position with IAD? Were you the president?

A National Chairman and Chairman of the Board.

Q Did Baker have general authority to issue releases for the organization?

A Yes. Unless we issued them in the name of the board, in which case it would have to be voted by the board. But he put out many releases and edited the newsletter, Home Front.

Q Did you have any problem or disagreement with this release when it did come to your attention?

A I don't remember any fundamental quarrel.

MR. MAHONEY: I would like to offer 108 whenever you are finished with it.

MR. BLASBAND: No objection.

THE COURT: Received.

xx (Plaintiff's Exhibit 108 received in evidence.)

Q Referring to 108, which is a comment on Buckley's column about you, it says here, in substance, "Further, since I also lack Mr. Buckley's assurance, I cannot leap to any sweeping conclusions as to why he is attacking the IAD, but the timing I think raises a significant question Mr. Buckley may care to answer. Recently IAD produced

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some information on the extent to which J. Frawley's companies support extremist publications and operations. Mr. Frawley's Eversharp Schick Company, for example, is a major advertising and/or sponsor of quite a number of far, far, far Right publications and broadcasts which are simply Conservative. One of the latter is Mr. Buckley's National Review. Is it just chance that Mr. Buckley began telling falsehoods about us right after we started telling the truth about his major advertiser? To find something to rail against, Buckley used an eight-month old speech read in Dr. Littell's absence at a NEA affair in Minneapolis. Buckley accuses IAD's chairman of lumping together Hargis, Bundy, McIntyre, Welch, and Gerald L.K. Smith," and that in a single sentence "Not true, but not a bad idea," and then goes on to complain that Dr. Littell called these "the Fascist underworld," a phrase which appears to be a Buckley invention.

Did you accept Mr. Baker's analysis that Mr. Buckley was writing about you in this way because IAD had attacked Mr. Frawley?

A I didn't have any information one way or the other about it. Mr. Baker worked for years in the labor movement and I suppose he has a tendency to look for economic explanations of things. I would myself,

being a theologian, be more inclined to look for ideological. But I neither affirm nor deny it.

THE COURT: You don't --

THE WITNESS: I did not then nor do not now.

THE COURT: Did you review or help write that release?

THE WITNESS: No. The significant thing is that it again is a documentation of refusal to correct errors which are known to be such.

Q You talk about "Who are the Totalitarians". You said that once again in "Who are the Totalitarians", Mr. Buckley quoted Gaskie instead of quoting the speech. Will you show us where?

A We are going to come to textual exegesis in a moment or two.

Q It is a simple point. I would like to get it covered at some point.

A We are going to come back I trust and take up the documents wherever the content should be discussed. Then I wrote him a very harsh letter of February 14 and said he didn't belong in the dialogue if he conducted himself in this way. And on February 28 he wrote me from Switzerland a very harsh letter in which he accused me of being mentally unbalanced. And on these mutual

discourtesies our contact ended.

Except that on March 12, 1968, then, as it turns out, Buckley printed the National Review, and that is Item Defendant's Exhibit D, he printed our exchange of impoliteness and again attacked me and the IAD. This I never received the courtesy of a carbon of, and saw for the first time in March of this year.

Then, July 24, 1968, the National Review again attacked IAD using a Steve Allen, reference to Steve Allen's sponsorship, which I will come to in a minute as to its significance.

THE COURT: July --

THE WITNESS: July 25, 1968. And that is Plaintiff's Exhibit 23. This follows --

THE COURT: You saw that at the time?

THE WITNESS: I don't think so. I think I picked that up later.

Q After Wild Tongues was written?

A No. Incidentally --

Q When you say after July 25, '68, when did you pick it up?

A I'm not sure. It was in my stuff.

THE COURT: It was some time before you wrote Wild Tongues?

A Yes. Incidentally, there was one other point I wanted to mention, Mr. Mahoney. We were speaking earlier about the Brooks File. I thought the Brooks File had been collated in my overall collection, and I spoke to Mrs. Littell about that since we saw each other before, and she said that the girls never got that done. So that that item which I used from Emily Brooks was not from the Brooks File but was sent to me by letter before I got the whole collection. I think that is important to get this --

Q That is the one about the speech in Phoenix?

A Right. It's important to get the stuff in proper chronology. So this July 25, 1968, attack followed on a June, 1968, Edgar Bundy News and Views attack. In a minute I will show that it uses the same language, practically.

THE COURT: It follows what?

THE WITNESS: A June, 1968, News and Views attack published by Edgar Bundy.

Q Is that in evidence?

A Yes. I think all of the News and Views are in evidence

THE COURT: Let's see.

(Pause.)

THE WITNESS: This is the item. I don't know what number it has.

MR. BLASBAND: What item is it?

MR. MAHONEY: Is this in?

THE WITNESS: We got all three of those News and Views in.

(Pause.)

THE COURT: 94, News and Views, June, 1968. Why don't we get that and show it to Dr. Littell and confirm that.

(Pause.)

BY MR. MAHONEY:

Q We just have one page in evidence. Is this what you are talking about?

A Yes. I have the whole thing here, but the one page is what I think is important at this point. Although the whole issue is devoted to an attack on me and the IAD, but that is not the question.

THE COURT: Then what was the next?

THE WITNESS: Then on August 15, 1968, the National Review published another attack on me including again those false quotations from Gaskie.

Q Is that in evidence?

A It should be.

Q Aren't you off by a year?

THE COURT: Is that November?

MR. MAHONEY: I think that is August 15, 1967. I think he is off by a year. That is when he quoted Gaskie.

THE WITNESS: Right.

THE COURT: There is a November, '68, item.

THE WITNESS: There is an August, '68, item, too.

(Pause.)

THE COURT: Defendant's Exhibit AA. Let's see if that is the next one in sequence.

THE WITNESS: You may be right.

THE COURT: Why don't you take a look at this.

(Pause.)

Q Is this what you are referring to? This is November, '68?

A No, I have that. November 19, 1968.

Q Yes. If you are talking about something in August that quotes Gaskie, aren't we talking about 1967?

A I think you are right.

Q What is next after this, then?

A November 19, 1968.

Q That is Exhibit AA?

A Yes, and also Plaintiff's Exhibit 50, I guess, and AA.

Then there is an attack on me and on the IAD in which he acknowledges his dependence on the Church League of America and the issue is their News and Views of November, 1968, which I will take up in a minute.

Then January 10, 1969, there is another attack in the National Review.

MR. MAHONEY: Let the record show, your Honor, that I think he's picked that up from Plaintiff's Exhibit 19 or Plaintiff's Exhibit 20.

THE WITNESS: Plaintiff's Exhibit 19.

Q The reference there, Doctor, is wrong. There is nothing in the National Review of January, 1969. I think it is an erroneous date reference. There is nothing in the January National Review of 1969. Unless you have something.

(Pause.)

MR. BLASBAND: I am sorry, your Honor. I don't know whether we have testimony from Mr. Mahoney or there doesn't appear to be a question.

THE COURT: Let us clear it up. It shouldn't be too difficult.

THE WITNESS: You mean what, the dates are

wrong?

Q Yes, I believe it's the November, '68. When we went through, we went from Plaintiff's Exhibit 19 and I believe there is testimony on this from Mr. Buckley in any event, we went from Plaintiff's Exhibit 19 and looked for that and didn't find anything, but found the November, '68, item and brought it in. And then you will produce the November, '68, item.

THE COURT: It sounds to me like the reference that you have in Plaintiff's Exhibit 19 to a National Review of January, '69. Why don't you compare that with Exhibit AA, because I think that it is -- I think there is just a misdating in Exhibit 19.

MR. MAHONEY: I believe that is the case, your Honor.

THE WITNESS: I don't think so. May I see it, then I will know?

(Handed.)

(Pause.)

THE WITNESS: Oh, yes, you are right. Excuse me. That was corrected a long time ago. Right. I am sorry.

Q No problem. What is next in the chronology, Doctor?

A That is as far as the National Review's items that I have noticed or have been called to my attention; and the correspondence, that is the record of publications and correspondence and so forth.

Q Let me ask you, just before we leave this subject, have you over the years been reading National Review regularly?

A Not regularly, no.

Q How did these items come to your attention? We have a number of National Reviews there. How did it come to your attention?

A The Women's Society of Christian Service organized through its membership pool who had followed extremist organizations, and they sent me fliers and copies of magazines, and I got odd copies of John Birch Society Monthly Bulletins and occasional copies of the National Review, and copies of Common Sense; and wherever some person some place saw an article or something that was an attack on me, for example, they'd send them to me. And then my students -- that was one source.

Then I was teaching every year from 1958-1959 school year on, a graduate seminar on totalitarianism. I have still a sequence now, one year it's the church struggle in the United States; one year it's the German church strug

one year it's the holocaust and destruction of European Jewry; one year it's the suffering of the religious communities under Marxist governments. And the students, graduate students, some of them writing theses, all of them writing term papers, would bring into the seminar items they have noticed. This is how Mr. Buckley first came to my attention, as a matter of fact. Some student in the seminar at SMU had picked up his appearances at Phoenix and/or Houston or some other place --

Q Did these items go into a file you kept on Buckley?

A Yes.

Q What I am trying to understand, a number of the exhibits that we have in here that are covers of the magazine, it is stamped on the cover, Temple University. Apparently they are from the Temple University library.

A Sure.

Q How do we match what is in the Temple University library to what is in your files?

A Because I don't get at them. A long time ago I mentioned to you my problem in being moved at the university and the move not completed, and it would be a problem anyway as far as the National Review files are concerned, because when I had the seminar in Chicago,

I had a graduate assistant and a secretary who did nothing but follow these items, plus students. We founded the Freedom Institute at Iowa Weslyan College, which had there a staff person and secretary and we had Group Research with the archives in Washington.

All of these were a source of information to me. Then, when the instructions came to produce papers, I still had -- you said, are all the documents that you had in evidence, and the answer is half of them are boxed up some place. I never did find them.

THE COURT: I think we have gone over that enough.

THE WITNESS: Right. When it came to the question of National Review, I went back through the Temple University file, which was available to me, and things which seemed familiar, you know, which dealt with issues and subjects which seemed familiar; my wife and I Xeroxed them and I sent them along.

That is how we got them. I indicated earlier, I cannot say that every one of them was in my mind at the point, you know, individually in my mind at the point when I was writing.

Q Can you say --

A I know that there are some dozens of items which

are in my mind which I have read, which I can't produce or can't remember any more. So it just is general background.

Q Are you convinced or sure that you had actually seen all the things from the National Review put in at the time you wrote what you wrote about Mr. Buckley?

A Aware that I had read every item?

Q That you have put in evidence here?

A No, because you flutter through.

THE COURT: I have a hearing at four o'clock. We will break now and we will resume at 10 o'clock tomorrow. Does that finish your chronological description?

THE WITNESS: Yes, except for the John Birch Society Bulletin.

THE COURT: We will take up where we left off today.

(Adjourned to June 13, 1974, at 10.00 A.M.)

elds 1

William F. Buckley, Jr.,

-vs- 70 Civ. 2044

The MacMillan Co., et al.

Criesa, D.J.

New York, New York
June 13, 1974--10:15 a.m.

MR. BLASBAND: Judge, may we go off the record for a minute?

THE COURT: Yes.

[Discussion off the record]

F R A N K L I N H. L I T T E L L, resumed:

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q, Dr. Littell, when we terminated yesterday I believe you were finishing up on the chronology of events that you wanted to bring to the Court's attention?

A Right.

Q Would you conclude that?

A Thank you. The chronology as far as my experience with the National Review in the general context of the radical right is concerned is complete, but I do want to point out that it was the John Birch Society monthly Bulletin of December, 1967 which pulled the plug on the avalanche, and that the Birch Society Bulletin repeated personal attacks

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on me of various sorts which I don't care to spend the time pointing out that the lies and falsehoods that were in them.

March, 1967; April, 1967; May, 1967; June, July, August, 1967; September of 1967; October of 1967, and November of 1967. Every one of those issues.

THE COURT: Wait a minute. Let's go back. I think we have gone through the dates, but as long as you summarize them --

THE WITNESS: No, these I haven't mentioned.

THE COURT: Let's work with the dates we have, at least as a starter. Then I can get oriented.

BY THE COURT:

Q November 13, 1966 the IAD was launched and your chairmanship was announced, right?

A Yes.

Q December, 1966, I am now just summarizing your testimony, right?

A Yes.

Q First overt attack, and this was in the John Birch Society monthly Bulletin, right?

A Right.

Q Then you said in late 1966 and early 1967 there were many attacks upon you and the IAD, including attacks in publications or radio broadcasts for which Dan Smoot,

Hargis, McIntyre, Kent Courtney and others were responsible?

THE WITNESS: Were representative. They are representative cases.

Q These among others?

A Among others.

Q Included in that group of attacks was the National Review item of January 10, 1967?

A Right. That was the only reasonably responsible columnist or journal that joined in this.

Q You felt that the January 10,'67 National Review item closely paralleled the News and Views item of January '67?

A Yes.

Q The next date I have is August 15, 1967. Is there some date between January and August?

MR. MAHONEY: Your Honor, what he was saying before is that the Birch Bulletin was attacking him in these months, you know, on a regular basis. He wasn't referring to the previous testimony.

A This is new testimony.

Q All right. I just want to get the chronology. I will fill-in months if you don't mind. What happened between January and --

A As far as the National Review and its editor is

concerned, which is what I told yesterday, you have August 15, 1967.

Q I have got that.

A Then you have an exchange of correspondence for which we gave the dates.

Q I want to get anything you want to call my attenti to with regard to any of these -- anything at all in the chronology. Is there any event in your chronology between January '67 and August 15, '67?

A No. See, what I have is a table of the relations with the National Review, so to speak, and its editor.

Q Okay.

A Then I have a footnote, if you will, pointing out that as part of this landslide of attacks, every radical right organization and organization in the country, as far as I could tell, joined in it, and the backbone of the attack was a monthly personal attack from the John Birch Society monthly Bulletin which ran from December of 1966, which was the kickoff, clear through to November of 1967.

Q Let me put a note down, monthly attack.

A They missed one or two months, therefore, I have the pages and the dates of the actual year of it.

Q Approximately. Monthly attack, approximately.

A And that is it, the page.

Q In the John Birch Bulletin?

A From December '66 to November '67, right.

Q Right.

Is there any other material you want to fill-in for that period?

A Not on the chronology, no. If I may, I would come to the question of exegesis and textual comparison.

Q All right. Let's go ahead with the chronology. I have got the August 15, 1967 item in the National Review which we noted. Then we have got the exchange of correspondence between you and Mr. Buckley, November 21, 1967 letter from you to Buckley; that is Exhibit 107. Then we have got the January 3, 1968 letter from Buckley to you enclosing the Gaskie column.

Then we have the January 14 letter from you to Mr. Buckl sending the speech.

A A second time.

Q Yes. Then there was the February 10th column of Mr. Buckley, "Who Are The Totalitarians?" Then you wrote him on February 14, '68.

A We have an undated memo in there which we thought probably came between November 21 and January 8.

Q Right. Then we have got the material written and issued by Baker and Mr. Buckley's reply saying he wouldn't

retract.

A The Baker statement is a summary following a letter he wrote Mr. Buckley and Mr. Buckley wrote him, so it is the third item, the only one we have.

Q Then we have got a letter of February 28, 1968 from Buckley to Littell, and then March 12, 1968, the Buckley column printing portions of the correspondence. That's all I have got in the way of chronology.

A Then I'd better add two items --

Q Wait a minute. July 25, 1968, there was an item in the National Review about the IAD. That in your view coincided with the June, 1968 News and Views.

Finally there was a November 19, 1968 National Review attacking you and the IAD, as you have testified.

A Right.

Q That is what constitutes my notes on the chronology. Is there anything else you want to add?

A That's all I am aware of on the National Review, yes.

Q Why don't you go ahead with your discussion of comparison of contents.

A The former was on timing and target. If we take any number of issues which I have previously documented, we will find on a number of them a curious simultaneity, so to

speak, and parallel of content. But I have simply analyzed three or four representative illustrations of the problem. The others I can't reconstruct honestly and say that I remembe that six years ago in a seminar some student brought in and pointed out parallels, although we did that all the time, but I did have a fairly complete documentation on the attacks on me and on IAD which I could reconstruct because I remember them as being personal.

If we take, for example, the nature of the attacks in the National Review, in the John Birch Society Bulletin, and in the Church League of America News and Views, you find certain themes, some of them fabricated, somebody made them up, and when they show up they are obviously being transferred from one mind, the inventor, to other minds, because they are not public information, they are not factual. And also, of course, sometimes there are phrases.

So here, for example, in the Church League of America for January, 1967 --

Q As we refer to these things, if I could have them so I could look at them, that is Exhibit 92.

A You will find that it is declared that the IAD is the successor to the Larson Committee. And this is -- that is in summary.

Q Why don't we try to look at these things together.

Where do you find this?

A Here at the bottom. It is identified with Dr. Arthur Larson, the formulation of the National Council for Civic Responsibility.

Q Was that the Larson Committee?

A That is what we called thereafter the Larson Committee and here it is referred to again.

Q What is your point on that?

A Well, the point is that it isn't true --

Q Okay, but what is said about it?

A What is said is that this is the succession, in succession -- IAD is a successor to the Larson Committee.

Q I don't see any statement, and I'd be happy for you to call my attention to it, but I don't see any statement saying this is the successor to the Larson Committee, the so-called NCCR. I see a statement that you are doing the same kind of thing as the NCCR did and Dr. Larson did which we are critical of. But successor is a different kind of word. Show me where it says successor.

A All right.

[Pause]

Q Do you find it?

A No, the exact use of the word successor. The association.

Q Am I right in summarizing -- it is the bottom paragraph. Like the current IADI, the old NCCR focused its attack on the John Birch Society and the extremists of the radical right, and so forth. They are saying that you are doing the same kind of things that Larson and the NCCR did and they are critical of those things; isn't that about it?

MR. BLASBAND: Judge, if I may, you have these notes on the term "new organization". I think in context it is quite reasonable to believe that the thrust of that was that this is not a new organization, it's the old Larson organization.

Q Okay. Let us look at that.

[Pause]

Q You'd say there was an implication at least?

MR. BLASBAND: Yes, your Honor.

A The implication for what it is worth becomes explicit in other publications. I think this is the one in the John Birch Society Bulletin of May, 1967, the same association is made. Now we look at it, we can see if they use the word successor, or simply make the association.

MR. MAHONEY: Is that in evidence?

THE WITNESS: Yes, it is in evidence.

BY THE COURT:

Q What might help me is to, I guess this is going

to be difficult, but why don't you go -- are you viewing the National Review item of January 10 as being similar in content and ideas to the News and Views of Exhibit 92?

A Well, what I was saying --

Q Is that the comparison you are trying to make?

A Which one do we have at this point?

Q I have two things here, Exhibit 75 and Exhibit 92; the National Review of January 10, '67 and News and Views of January, '67. Do you want to draw a comparison between those two items or not?

A I want to draw a comparison between what was published in January, 1967 News and Views of the Church League and May, 1967 monthly Bulletin of the John Birch Society, and in the February 7, 1968 issue of the National Review.

Q Then let's go through that process.

John Birch Society, what date?

A May, 1967.

MR. MAHONEY: Do you have an exhibit number noted on that, Doctor?

THE WITNESS: I don't. That was one we entered yesterday and I didn't write it down. Here is the item. I don't have a number, your Honor.

MR. BLASBAND: Is that 99?

THE WITNESS: May, 1967, is that it?

MR. MAHONEY: I will see.

[Pause]

MR. MAHONEY: Yes, it is 99.

MR. BLASBAND: That's right. It is Exhibit 99, your Honor.

BY THE COURT:

Q What is the other item?

MR. MAHONEY: What is the other item?

A Then the other item is the National Review, November, 1968, that one that we had wrongly dated January of '69, but now have it correctly identified November, '68. We have been over that several times.

Q I thought you were going to compare three things: News and Views of January, '67 --

A Excuse me. February 17, 1968 National Review. I misspoke.

Q Wait a minute. We want to compare, or you want to compare News and Views of January '67 first; John Birch Society Bulletin, May '67 second.

A Yes.

Q National Review February, '68, third.

A February 7, '68, right.

Q Do you also want to bring in the comparison of

November '68?

A No, I misspoke.

Q All right.

MR. MAHONEY: What is the date on that?

THE COURT: February, '68. That is "Who Are The Totalitarians".

THE WITNESS: No, Who Are The Totalitarians was February 10 and 11. The National Review pages for February 17, '68 are also in evidence someplace.

THE COURT: Sure they are. Let's just get them now.

[Pause]

THE COURT: It is part of Exhibit 38. I think we have our three items.

THE WITNESS: I think that was in the same month.

THE COURT: Do you want the Xerox or the original?

THE WITNESS: Did this appear in the National Review or is that the column?

MR. MAHONEY: That is the column. Some of Mr. Buckley's columns are picked up by the National Review. I don't know whether this one was or not.

THE WITNESS: No, we have another item, and I have a quotation from it which doesn't appear in there. From the February 17, 1968 National Review.

MR. MAHONEY: What does it say?

THE WITNESS: What is says is, it refers to me as an abusive rhetorician. And then it says of the IAD, it is the successor to the National Council of Civic Responsibility, the phony outfit financed by the Democratic Party and commissioned to defame Senator Goldwater.

MR. MAHONEY: That is the column, isn't it?

THE COURT: Yes, that is the one, Who Are The Totalitarians.

MR. MAHONEY: That is the column.

THE WITNESS: The column sometimes appears in the National Review.

THE COURT: I think we are thinking about exactly the same thing. I think that a complete text of that is here.

THE WITNESS: All right. I was thinking this was a column.

MR. BLASBAND: Judge, I think the confusion is that Mr. Buckley's column does appear in the National Review as well as in the newspapers.

THE COURT: Fine. But we are talking about the same thing.

THE WITNESS: Right. Here's the quote down at the bottom of the page. Again you get the Larson Committee tie-up.

Q Let's go on with the comparison.

A There the term is used. Okay. Now, the John Birch Society Bulletin as to which I referred says "the most frenetic at the moment, of all these groups, is the so-called Institute For American Democracy. It was called some months ago, to take the place of Arthur Larson's now defunct National Council For Civic Responsibility, in trying to smear John Birch Society out of existence. It is headed by Dr. Franklin H. Littell" and so on, and gives some other information which is overt information in the newspapers.

But the identification of the Larson Committee is "secret information." It's an invention of someone and its appearance in this fashion is one of the things which seems to me to be a transfer of interpretations, ideologies, lines of attack.

Q Then in Who Are The Totalitarians, you say the same --

A The same connection, although there it is said that it is the successor, I think. It says so in the John Birch Society Bulletin and I think it says so also in that column: Didn't I read -- yes, it is the successor the National Council For Civic Responsibility, and so forth.

That is what Mr. Buckley says. So if you wanted to be extremely careful about it you'd have to say the Church

League News and Views does not say it is the successor, it simply implies a relationship; but the John Birch Society Bulletin says it is the successor, and that is what Mr. Buckley says.

MR. MAHONEY: Where does it say the successor?

THE WITNESS: "It was formed some months ago to take the place of Arthur Larson's now defunct National Council For Civic Responsibility."

MR. MAHONEY: It doesn't use the word "successor." You are talking about picking up phrases, where? Doctor, it doesn't use that phrase.

THE COURT: The documents speaks for itself. What other comparisons?

MR. MAHONEY: Your Honor, before we leave this, I have one or two questions.

BY MR. MAHONEY:

Q Is it the case that sponsors of the Institute For American Democracy had in fact been sponsors of the National Council For Civic Responsibility?

A I think there were six or eight of the 60 or 79 who had been on both. Although I was not familiar with the Larson Committee, myself. And it certainly was not a successor group.

Q Did the Larson Committee have the same -- well,

did the Larson Committee have the purpose of looking into, or the stated purpose of looking into extremism in the United States?

A I don't know. What they say of it is that it was formed and financed by the Democratic Party to attack Senator Goldwater in the 1964 campaign. This was certainly a much different purpose from IAD.

Q I just want to know whether you know what its stated purpose was?

A I don't. But if I find the connection interesting, that is, the publishing connection.

BY THE COURT:

Q What other comparisons?

A Then another illustration of the parallel content, I am not bringing in any except these three, although the same connection was repeated dozens of times throughout the various organs in the radical right. In other words, these are just the beginning of a discussion. Then in November of 1968 in News and Views of the Church League of America, we find --

Q Just a minute. We are now comparing News and Views of what?

A The Church League of America.

Q November, 1968?

A Right. And here it is, although it doesn't have a number on it.

THE COURT: That is 93.

Q What are you comparing that with?

A Then, very soon, the story was picked up and widely circulated that the IAD had been established by the Anti-Defamation League.

Q Is that said in Exhibit 93?

A Yes.

Q Okay, let's find that.

A We can see exactly what it said. It said that they created it, on page 2, and that it was a New York group.

Q On page 2 of the News and Views of November, 1968, Exhibit 93, there is a statement that investigators of the Church League have found that the tax form address of the IAD was 315 Lexington Avenue, which is the headquarters of the Anti-Defamation League; is that what you are calling attention to?

A Well, I am calling attention to the connection which they make of IAD and ADL. Whether it is true or false, I don't know.

Q What other publications?

A So that the November, 1968 Church League News and Views renews the Larson connection. And it adds the

connection with the ADL and refers to it as a New York group.

Q ADL?

A Yes, Anti-Defamation League.

MR. BLASBAND: It is the title on the article itself, your Honor. The ADL-IADI Axis.

Then in the National Review, November, 1968, after referring to me as a liberal minister, apparently he thought he knew that much, I don't think it is true particularly, he refers to the Church League as a left liberal group from bottom to top, that is a quote. Then "The thing is a fraud, the IAD is a New York group. The IAD received its support in 1966 from the Anti-Defamation League."

Q Is that the end of that comparison?

A That would be the end of that, I think.

MR. MAHONEY: Could I ask a question or two?

THE COURT: Yes.

BY MR. MAHONEY:

Q Referring now to Exhibit 93 where the following appears, that is the Church League report, "Broadcasting the official journal of the broadcasting industry for March 13, 1967, carried an interview on page 48 with Charles R. Baker, executive director of the "newly formed" IADI in which the following was stated: "Mr. Baker said IAD grew out of discussions involving members of the National Council of Church

and of the Anti-Defamation League of B'nai B'rith who felt "letdown" after the Larson group (folded?) followed and who were concerned about extremists of both left and right. These concerned individuals, Mr. Baker said, saw similarities between the two extremists and that they were at war, in quotes, with those occupying the middle ground. Broadcasting stated that IAD is the kind of spiritual ~~sector~~ successor to the National Council For Civic Responsibility, which was organized September '64 to produce programs to combat what is called coordinated propaganda activity of the extremist right wing groups. That group headed by Arthur Larson former head of the United States Information Agency went out of existence less than a year later."

How did you conclude, Dr. Littell, that Mr. Buckley might not have picked up the successorship of IADL -- or IADI, rather from the notion, that concept of successorship from the prior Larson group? How did you conclude that he wouldn't have picked it up, perhaps, from reading the Broadcasting Magazine?

A I think that one way I concluded is that I didn't, I wasn't aware of this interview, but what the interview says is that there was a feeling of disappointment in the collapse of a worthy public group. It shouldn't say that it is a successor or anything of the kind.

Q It said Broadcasting said that --

A Right, Broadcasting concluded.

Q Mr. Buckley I think you know is involved in television work, has been head of programs in 1965 and has been a television personality for a number of years; are you aware of that?

A I have heard of it, yes.

Q What I am asking you, how did you conclude, when it says here that publication, The Broadcasting Industry, the kind of publication that Mr. Buckley might read, says that IAD -- how did you pick this concept up from these sources?

A Because I had already spotted his picking up things from News and Views and like sources. The timing was practically the same, and when you clai i it is a successor group in that way it seems to me clear what is being said. That item appeared --

THE COURT: When was the issue of Broadcasting?

MR. MAHONEY: November, '67.

MR. BLASBAND: There is much doubt about it. Mr. Buckley says he picked it up from the Church League of America.

THE COURT: The February '68 column of Buckley say that IAD is a successor to NCCR. So obviously that idea

was had by Buckley before the Church League News and Views of November, '68. Anyway, I think we have explored that as much as we can. Let's go on to something else.

MR. BLASBAND: The point is that Mr. Buckley says in his November, 1968 column, "The Church League of America points out ' --

THE COURT: That's right. It also said the same thing in February, 1963, and Dr. Littell says he concludes that Mr. Buckley got it from the JBS Bulletin of May, '67, and the News and Views of January, '67. Mr. Mahoney said it could just as well come from an issue of Broadcasting for March, '67.

MR. BLASBAND: I think the point is, your Honor, I think we are addressing ourselves to the question of whether Mr. Buckley picks up things from the Church League of America, and Mr. Buckley says he picks up things from the Church League of America.

THE COURT: No question about it.

MR. MAHONEY: No question Exhibit 50 is an instance.

THE COURT: Is this the kind of analysis that you made at the time you wrote Wild Tongues or prior thereto? Did you go through this process of comparing and noting analogies?

THE WITNESS: No. I was just aware of it. It was

brought up from time to time in the seminar, that the same story was appearing in a whole bunch of different organs simultaneously or virtually simultaneously. I didn't line the thing up this way.

BY THE COURT:

Q But you do have this passage in Wild Tongues, on page 51, "The National Review and its syndicated newspaper column On The Right frequently print news items and quotations picked up from the openly fasci t journals."

In preparation for your writing that particular part of Wild Tongues, did you make an analysis of the kind that we are doing here this morning?

A No. I wrote, as I explained sometime ago, I was -- when you write with flair, you don't stop on every sentence to have it documented the way you do a scholarly book. You can write a textbook or a scholarly book stopping and doing every word and sentence. But when you are writing with what you think to be a countercrusade, so to speak, and this was the Church struggle that I was living with, you don't stop - you couldn't write with life and flair if you stopped to do that. You have to simply write.

Q Forgetting the style and all now -- well, not forgetting anything -- did you have any basis for making the statement that you made? You told me you di n't stop and

spend hours --

A Right.

Q What if any basis did you then have for the statement I just read to you, the so-called pickup sentence we have talked about so many times?

A I have these which we have just gone into, which were duplicated repeatedly --

Q Wait a minute. I don't think you understand. You have told me you didn't stop and analyze these items when you made out that sentence, right?

A Right. But I was aware of them. I was aware that there were certain phrases and identifications which had appeared in twenty-five, thirty, forty different -- for instance, one of the things, although Mr. Buckley doesn't use this one, is the charge that I and the IAD were setup in obedience to a so-called Reuther Memorandum, an attack on Walter Reuther. This thing appeared in twenty-five different radical right organs.

MR. MAHONEY: But not National Review.

THE WITNESS: Not National Review.

MR. MAHONEY: Not Mr. Buckley's column.

THE WITNESS: Not Mr. Buckley's column.

Q We talked in court this morning about the comparison that the record shows, right?

A Yes.

Q Back at the time you wrote Wild Tongues did you have in mind any items or ideas that you felt Mr. Buckley carried over from journals like the John Birch Society Bulleti or News and Views, and so forth?

A Yes --

Q The point I am trying to make is, did you have this point in mind at the time you wrote Wild Tongues, the thing we are now dealing with in court in 1974? Do you get my question?

A [No response]

Q This is 1974, right?

A I am well aware. That is why it's so hard to remember exactly what I had in mind.

Q I am asking you if you had in mind any of this kind of thing back in 1969 when you were writing the book?

A '68-'69.

Q All right.

A Yes. That is, I was aware, and there were others, too, which as I say I can't reconstruct.

Q You were aware of what, in '69?

A I was aware that certain points, certain phrases, certain interpretations would appear in Buckley's column, in the magazine, at the same time or virtually the same time

that it came in the Bulletin, the Birch Society Bulletin, came in News and Views of the Church League, came in Billy James Hargis publication, in Carl McIntyre's publications. Not every time, but the same stories, the same lines, the same connections, real or fancy, would appear in a whole set work. And the timing, of course, was part of the point, the issue, for example.

And some of them were good issues, if you are speaking about -- if it was the only thing you saw. As I was saying personally to Mr. Williams and I should say to Mr. Mahoney, as a matter of fact, I was on the same side practically on the Katanga issue, but I didn't join the National Committee where two-thirds of the members were Birchers. So I am not talking about --

MR. MAHONEY: For the record, your Honor, I joined that committee and two-thirds of the members were not Birchers.

THE COURT: I didn't join the committee.

MR. BLASBAND: Who were the other two men?

MR. MAHONEY: Then or any other time.

Q Let's go back to our trial. You are saying that back in '68, '69 when you wrote this book, you were aware of items of fact and opinion that appeared in Mr. Buckley's column that you felt also appeared in these other radical right organs, right?

A Yes, sir.

Q Were they items of fact and opinion that appeared in things other than Buckley's column, Buckley's writings and the radical right items?

A You mean like Broadcasting?

Q Yes, that is what I am talking about.

A I wasn't aware of that. I assumed that it was taken out of News and Views, if not the Bulletin.

Q Did you believe that Mr. Buckley actually got these items and ideas from the Birch Bulletin or News and Views, or similar publications?

A Yes, or, you know, where he got the idea that now is the time to take this attack, he would not -- he wouldn't print word-for-word, but you pick up an idea and then you rewrite it, if you think it's possible and if you don't like the people that you are writing against.

I assume that is what a polemical editor like Mr. Buckley does. In fact, I am convinced of it.

Q This may be a fine point and maybe it's not worth pursuing, but let me pursue it. In connection with what we are talking about, there may be two points. One is that by some coincidence Mr. Buckley shares the views of Mr. Bundy, and they both about the same time say the same thing, by coincidence; do you have that one possibility in mind?

Maybe you don't agree with?

A Yes. Except where he says.

Q I am just trying to pose a question. And another possibility is that Mr. Buckley or people on his staff actually get the ideas, and I emphasize the word get, from Bundy or the JBS Bulletin. You get the two contrasting possibilities. Did you believe that the second alterantive was the one that was happening, rather than the first, or what did you believe?

A See, there are other issues, a whole series of them, where at the same time, with the same kind of emphasis there appeared in the National Review, long an organ of the radical right, and the Birch Society Bulletin, certain target and timing. I can list a whole bunch of them here, some of which my students had also called to my attention, but which I can't reconstruct now and honestly say that is what I had in mind when I wrote. But I was aware that there had been called to my attention and I had noticed myself ten, a dozen times where Mr. Buckley's writing showed a most marvelous parallel to what appeared in the other radical right journals.

Q What did you conclude from that?

A I concluded from that that he was a fellow traveler on the radical right.

Q On the narrow question of who derived the ideas from whom?

A I concluded that he was picking up certain items -- see, whatever is in the public domain, and Mr. Mahoney has a good point on that Broadcasting issue which I didn't realize at the time about it, it may simply because of ideological orientation, pop up naturally. But when it pops up again and again in a certain way, I don't think it's just coincidental. You pick up a bit of information, like it's a New York group, it's a ADL group, it's a successor to the Larson Committee.

The Birch Society Bulletin didn't say it, but Buckley and Bundy say it practically the same way. Somebody is picking up something. And the only way that --

Q You concluded that Buckley or his staff was picking up the ideas at least sometimes from these radical right journals, right?

A Yes, right.

Q Now let's talk about the meaning of "openly fascist Did you regard News and Views as an openly fascist journal?

A Yes, on fascist -- that is a -- that is a polemical term. Openly fascist I would be willing to use publicly in an address about the John Birch Society Bulletin, about Kent Courtney's newspaper down in New Orleans, about Gerald L.K.

Smith's The Cross and The Flag, and so on. Even after all of the multitude of lies that Bundy has published about me and my activities, I have not publicly called him a fascist or, you know. I think his journal is a front for the John Birch Society. I know that he is sponsored constantly by the John Birch Society in various programs, and so forth. But I have tried to be, in spite of the fact that I use rather harsh language sometimes, I have tried to be -- if I didn't think somebody was an anti-semite, then even though the ADL says Mr. Buckley has that shade, I didn't call him an anti-semite.

MR. MAHONEY: Who said that?

THE WITNESS: I beg your pardon. It's Bundy I was talking about. I was talking about Buckley and Bundy. I tried not to hold it in. You may not believe it because the language is polemical and as lively as I could make it. But I didn't. I don't think you will find any place in the book where I said something which was more than I believed. I think you find a number of cases where I said something less than I believed.

Q What you would call openly fascist journal, you would be willing to call the JBS Bulletin?

A Right.

Q What does Courtney put out?

A American Independent, or Independent American, a newspaper down in New Orleans.

MR. MAHONEY: Those are the ones that Buckley called kooks in the group research report, your Honor. Kent Courtney and his group.

THE WITNESS: Yes. But after he had appeared on the platform sponsored by him.

Q What else? You told me and I asked you to repeat.

A Gerald L.K. Smith's The Cross and The Flag would be an illustration.

Q What else, openly fascist journals?

A Dan Smoot's Lifeline, while it was running. Frank Keppel's Herald of Truth --

Q Herald of Freedom.

A Herald of Freedom.

Q Anything else?

A You know, it's an opinion on my part. I would say that Billy James Hargis' Churchmanship and Politics qualifie his publications for that appropriate term, too.

THE COURT: Let's take a short break.

THE WITNESS: But it's not a very precise term because none of them would admit it.

[Recess]

MR. MAHONEY: Your Honor, I have been instructed

by my client as I have informed you in chambers, to discontinue against MacMillan, the defendant MacMillan, that there's been an understanding reached between Mr. Buckley and the defendant MacMillan.

THE COURT: Get the form and fill it out.

MR. BLASBAND: Your Honor, as counsel for MacMillan, you are aware that I have not been representing Dr. Littell in this matter. I would ask your Honor if he wishes me to come if the Court wishes me to stay as a friend of the Court, to give whatever assistance I can to the Court in the matter of Dr. Littell's defense, understanding that I will not be representing Dr. Littell, but really functioning as a friend of the Court, or whether your Honor would want me excused from the case at this moment?

THE COURT: I'd appreciate any assistance you can give. Thank you very much.

MR. BLASBAND: Thank you. Your Honor, since I will be here as a friend of the Court, I think I ought to ask Dr. Littell if he has any objection to that status.

THE WITNESS: No, I would appreciate it.

MR. BLASBAND: Fine. May I as a friend of the Court interpose what I would think are objections had I remained?

THE COURT: Sure. I think we understand each other

MR. BLASBAND: Thank you. Go ahead.

BY MR. MAHONEY:

THE WITNESS: The question of News and Views of the Church League of America arises, and I haven't referred to them as such. But the thought keeps on constantly arising but I'm just not sure whether they are simply a front or whether I would call them a fascist journal. In any case, I haven't done so in writing or in public speech, being uncertain.

THE COURT: Okay. Where do we go from here?

Q With respect to News and Views, let me backtrack for a minute, Dr. Littell. When you wrote this book did you write it pretty much in sequence, I mean, the first page first and then on through to the other pages?

A No. I published, oh, twenty or thirty articles on various aspects of totalitarianism and ideological politi and the Church struggle. Paricularly the overriding theme in my mind when I wrote the book was the church struggle with attacks being made from without and within.

The first chapter makes that clear. I consider the first chapter the most important chapter of the book. Therefore, I had papers which I chopped and reformed and renewed and then notes from other readings that I hadn't yet used in any publications. That is the way you generally write

a book anyway, that you pull together things that you have done in reviews or articles, and so forth.

Q Did you write the first chapter first?

A You mean like -- when I was actually finishing off the book --

Q When you were doing the book, did you write the first chapter before you wrote the second chapter, and the second chapter before the appendices?

A I think probably, but I usually wrote it through, picking up each theme as I go along.

Q When you stated in your deposit[illegible] 'Do you recall when the manuscript was completed?

"A It must have been in the fall of 1968," do you have any idea when you would have finished that chapter?

A No. I corrected that later. We were wrong on the date. It was in the discussion at that time I didn't have any of my papers available at all, but I was writing in the fall of '68 into the spring of '69, and the nearest guide that I could recall after we talked about it, as to when I actually finished the theme, was that the Women's Society of Christian Service had a national conference in Oklahoma at the University, at which I gave the keynote, in early May of '69. And I received galleys just two or three days before that conference.

So that would sort of mean that the manuscript must have been finished a month or six weeks before that, and so on, as nearly as I can figure it.

Q With respect to the issue in Exhibit 50, the item of the National Review of November, '68, had you seen that when you wrote this book?

A This is the one that we were just discussing?

Q One of the ones, yes. It's the item from November 11, 1968, Exhibit 50; the one that you originally marked down as January, '69.

A I think so. I'm not absolutely sure, but I think it most likely, I don't know.

Q Doctor, what other specific examples of National Review or more specifically Mr. Buckley following other journals do you have?

A In the time when the book was being written, I had in Chicago a graduate assistant and a special collection being made in the library of Chicago Theological Seminary and a graduate seminar on the church struggle and Christian confronting extremism, and so forth. I also had a Freedom Institute at Ohio Wesleyan and a staff man and a secretary collecting material.

That is quite apart from the fact that in Washington we had this resource, which I actually didn't use that much

except for major items like the bibliography of Mr. Buckley, and so forth. In the seminar the way we would proceed is that the student would take a project for the quarter and write a paper on it --

THE COURT: How is this responsive? I thought he asked you if there were any other specific examples that you wanted to give us of comparisons; wasn't that it?

MR. MAHONEY: Yes.

THE COURT: Between National Review --

MR. MAHONEY: Where he thought National Review was following radical right journals.

THE WITNESS: But at the time.

Q Yes.

A That is, I'm just describing the way we worked. We would meet for discussions and students would bring in and find out parallels in whatever particular study they were making. Therefore, at that time I had and over the course of time had had called to my attention a whole series of things in which the lights went on all over the radical right, including the writings of Mr. Buckley.

I have a list of some of those items, but I cannot honestly today, six years later, say on Tuesday of April something or other some student brought in an item. I can't remember at this time.

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THE COURT: What we started before our break was to take the exhibits in evidence and show, you were showing similarities of comment in various ways. Getting back to that exercise, have you got any other items you want to compare?

THE WITNESS: I have two other illustrations of the method which was used.

BY THE COURT:

Q All right, let's got to those.

A In the initial attack of the John Birch Society Bulletin for December of 1966 the reference is made to my education at Union Theological Seminary; the line is that I was a disciple of Harry Ward, who is a communist, and that I wrote a series of or an article called --

THE COURT: What exhibit is that?

MR. MAHONEY: Exhibit 77, I think he is referring to.

THE COURT: Let me see that.

MR. MAHONEY: I think that is what he is referring to. That is the December '66 Birch Bulletin.

Q And you are comparing it with what?

A Now, and that I wrote an article called A Cell In Every Church.

Q That is commented on in Exhibit 77?

A Yes. That is reported and stated, reported and stated in 77.

We then have two rather unusual things, that is, the reference to Union and Harry Ward and an article entitled A Cell In Every Church.

Q What is the comparison?

A The comparison in this case, I have one illustration but it was repeated many times, two weeks later in the Herald of Freedom, the same line is taken.

MR. MAHONEY: What exhibit is that?

THE COURT: I don't think that is it.

THE WITNESS: Yes. The Herald of Freedom and the Billy James Hargis items are both in.

MR. MAHONEY: 19, your Honor.

A I don't know whether there is any point in discussing the content of these things. I have written perhaps three dozen articles and pamphlets on prayer cells. If anybody wants to know about prayer cells in private homes, that is what it is about. But to people who don't read it, it must mean a communist cell or something like that. And it appears in, it's taken right out of the Birch Bulletin by the Herald of Freedom.

BY MR. MAHONEY:

Q Has Buckley or National Review ever mentioned

any of this?

A No, not to my knowledge.

THE COURT: Then what's the point of this comparison?

THE WITNESS: The point is to illustrate the methods which was actively used in the seminar.

THE COURT: I am not really concerned with the seminar. What I need to have are illustrations, I don't say I need to have them, but the only thing that is going to help me are illustrations of things appearing in Buckley columns that show coincidence with these other writings. Are there any other illustrations than that?

THE WITNESS: As I said, I cannot reconstruct and say that this is literally what happened in advance of the writings of the book in the seminar. You have two others that indicate it --

Q Before we get to the seminar, Doctor, is there any other specific link of that nature in the documents received in evidence? Then we will go to a more general theme.

A In the material which we have, the two critical points where it seems to me there is a very clear copying in the National Review that I could put together and say that yes, I knew about that at the time, were the ones which I have given. The quoting of the Church League literature, the thing is a fraud, the IAD is a New York group, the IAD

received its support from the ADL, and so forth; and the connection with the Larson Committee.

THE COURT: The question is, the two specific instances of comparison that you have given us where content, similar content appeared in the Buckley writings and these other ones, they relate to your own situation and IAD. I say that is the trouble, because your book doesn't indicate that these had a personal context. In other words, when you say the National Review and On The Right frequently printed news items and interpretations picked up from the openly fascist journals you do not say that the items you are referring to are ones that have to do with the author personally.

THE WITNESS: Because they weren't.

THE COURT: Can you recall any other instances in a broader context that don't have to do with you personally?

THE WITNESS: And IAD?

BY THE COURT:

Q Yes.

A I can't, and that is the problem. I had, I have spent hours and hours and hours finding what I could of the documents and remembering as best I could what transpired between me and Mr. Buckley. Therefore, I was able to point precisely to reconstruct in a way that I think is true to my -- not just what I remember now, but what I remembered

then, so to speak. But then all I remember about then is in other issues, is that my student's brought in from time to time material from National Review, material from the Buckley column, pointing out that -- not alone, but also from all kinds of organs and writers, and so forth, pointing out that the timing and the content -- the timing or the content or the targets told us a story. Sometimes all three.

Q You mean you specifically recall that they did bring in things about Buckley writings?

THE WITNESS: Oh, yes.

Q Not just Hargis or --

A That is how Buckley came to my attention, because except for the Yale thing where we have spoken about that, I knew about that, but my attention first came to Buckley's activities on various platforms, and so forth, when students in my seminar in SMU, I remember one boy from Arizona or El Paso, or someplace, who brought in an item from Phoenix, his hometown was out there. So then I began to be aware of Mr. Buckley, and I began to select materials, and so for

BY MR. MAHONEY:

Q On Mr. Buckley?

A Yes. That is when I set up a file on Mr. Buckley.

Q So you have kept a file and you also keeps notes, don't you, of things, journal notes, and so forth?

A That's right.

Q Do you also keep notes of things that evolve out of your seminars, and so on?

A Not so much, because when we are in a seminar you don't have time when you are discussing to make the students wait.

Q For how long have you been keeping this file on Mr. Buckley?

A Since '61 or '62, about.

Q And you have reviewed that file in connection with your preparation of your testimony in this case?

A I was instructed by the Court to find as much backup literature that I was familiar with before I wrote the book. So then I went back through different organizational files and then I had the file on Buckley and I got it Xeroxed over now several weeks at least, and we sent it along.

Q In all this review, you can't show us any specific instance aside from the two relating to yourself, of cases of Buckley picking up anything from what you call a fascist journal, is that correct?

A No, that's not correct. The question is what I could then, I mean, what was on my mind then. I could reconstruct the whole fresh case, but that is not the point.

The point is when I was writing, what I was aware of. I didn't sit down with anything like this. This is a much more systematic review of the situation then when I was writing that two-thirds of a page.

When I was writing that two-thirds of a page I was simp aware of the fact that my attention had been called to a number of remarkable parallels, and furthermore --

Q None of which ever found a way into the files you reviewed; is that correct? None of these remarkable paral- lels that were pointed out to you, there were just none of those in the files you had been keeping on Buckley; is that correct?

A No, it's not correct. I mean, what are you talki about? This is an exercise in parallels --

Q I am wondering why we didn't get more of those parallels out of the file.

A You don't write an exercise in parallels unless you take several hours to do it. You are asking me if I ma a tape recording of my seminar. The answer is there is no tape recording of any graduate seminars.

Q You obviously have undertaken quite an offer to refresh your recollection, to review your files and to stimulate your recollection of a matter that you studied over a period of eight years. I am just asking whether

after all of that effort, there is any other parallels that you can tell us about other than some dim memory of what some student said?

A I can draw your attention to the issues that we discussed. But Mr. Buckley was not the subject of the seminar. He came in from time to time along with others. I couldn't give you details of what we discussed about Hargis or what we discussed about McIntyre or Dietrich Bonhoffer. You can create a memory, that is the problem. If I had sat down and reconstructed on the basis of documents in my files that kind of a parallelism, it would be much more logical and consistent than I had before me when I wrote, and furthermore, I would have created a memory, and before long I would have believed that is what I had remembered.

THE COURT: Dr. Littell, we are talking about what you had in mind prior to writing the book. I think Dr.Littell has said several times that he had heard or discussed instances prior to the writing of the book where he thought or from which he concluded that Mr. Buckley picked up things from the radical right organs.

We had that several times and he's also said that he didn't go through an analysis of documents, but he is relying on his memory of what he learned in seminars and general information. Let me just ask you this, Dr. Littell.

As you would hear, let us suppose you would hear in a seminar, a student draw a comparison between a National Review and a Hargis or a Bundy publication, and it was something you thought indicated a parallelism of views, would it be your practice to write -- let me ask you several questions -- would it be your practice to ask for items and put them in your file?

THE WITNESS: Not normally, because the student wouldn't be working on some kind of a paper.

BY THE COURT:

Q Would it be your practice to make a note in your journal of that?

A Not my practice. I would love to do it, but I have never had a secretary in a seminar and been able to do it that way.

Q So these things that you would learn in that way, you'd rely on your memory, right?

A Yes.

Q You might look at Exhibit 19, I think there is one thing, there is a January 28, '68 item which you might find relevant.

A That is only like ten percent, perhaps.

Q But it is something you wrote down?

A Right. January 28.

Q Yes. Is that anything along the line we are talking about now?

A No. This would be a note which I made when I was -- maybe that was brought in by a student, I don't know.

Q What did you mean when you put down that note? What was that referring to, that January 28, '68 note?

A It says to me that somehow or other an editorial came to my attention and that we must have been aware that at the same time there was a campaign and there was something launched in the Birch Society, and then my conclusion that it was ideological language, which must have been what I was thinking about at the time.

Whether that came in in a seminar or whether one of my students came in the office with it, I couldn't say.

BY MR. MAHONEY:

Q But it is from miscellaneous notes in your journal; is that right?

A Right.

Q So that some of the things that came to your attention of this nature would find their way into the journal from time to time, is that correct?

A Yes, I would think so.

Q This one did?

A That's right.

Q This one specifically did?

A That's right.

Q How long have you kept your journal?

A Since I was fifteen years old.

Q Is there any other journal entry anywhere that indicates as this one indicates, at least, a belief on your part of some writing by Mr. Buckley's that parallels consciously or otherwise the John Birch Society?

A I don't know. One of my problems was that I found packed in with papers two or three old copies of my journal and I went through it when I was told to build-up whatever background I had had. The other copies are in boxes.

THE COURT: I think we better take a break. We will break until 2:15. I have a form of stipulation of dis continuance, but it really isn't adapted to partial discontinuance. Let me get your office to get a form down her and get that executed.

As far as the rest of the evidence, it seems to me subject to any additional questions you have, that we have pretty well covered this whole topic of the comparisc what Dr. Littell calls the time and target content in his comparisons.

How much more do we have, does anybody know, wi Dr. Littell? Can we finish this afternoon?

MR. MAHONEY: Possibly so, your Honor. I am going to want, I think, in that last paragraph we have to get into some detail.

THE COURT: It seems to me this is about all that is left, isn't it?

MR. MAHONEY: Subject to anything we can think of at lunch.

[Luncheon recess]

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AFTERNOON SESSION

2:45 p.m.

F R A N K L I N H. L I T T E L L, resumed:

MR. MAHONEY: Your Honor, just at the outset, Mr. Williams mentioned Monday that there is a new decision down from the Third Circuit, Gordon versus Random House, and I felt we might make that available to you.

[Handing], and to the friend of the Court.

Also, your Honor, we may raise at this point another matter. The research people at National Review, because of the attention that has been given to the Church League of America, we have pulled together a pretty total set of their bulletin over the course of a couple of years. In terms of authentication, I think they speak for themselve but if anybody wants to raise the point, we could get somebody down here from National Review to testify as having gotten them.

THE COURT: I am not worried about authentication I am worried about reading.

THE WITNESS: I thought I was the chief offender in this, Mr. Mahoney?

MR. MAHONEY: This is just a sampling of their literature, not anything specific that he called upon, but

I thought it might be good to have it as reference. Apparently this is the only direct picking up that we have in the case.

THE COURT: No, we have the John Birch Society Bulletin. We have a set of those. You can put it in if you want to, but I don't guarantee any thorough canvassing of that.

MR. MAHONEY: Why don't we put the whole set in as 109.

[Plaintiff's Exhibit 109 was received in Evidence]

THE COURT: That is the News and Views?

MR. MAHONEY: News and Views. And there is also the National Layman's Digest, another publication of the Church League of America.

THE WITNESS: Your Honor, As soon as they are disposed of may I have them for my seminar?

MR. MAHONEY: Yes. And then the other ones are News and Views. Namely News and Views.

MR. RAISBAND: Were these obtained from the National Review library?

MR. MAHONEY: No, I think they were up at Yale University.

BY MR. MAHONEY:

Q You said, Dr. Littell, as we were breaking that

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there had been a number of your journals that you had reviewed and there were some in boxes that you hadn't review Which did you review, or more precisely, what time period was covered by the journals that you did review, in lookin for items relevant to this lawsuit?

A Pursuant to the instructions of the Court? You don't mean now what I used prior to the manuscript.

THE COURT: He is talking about in the litigatio right.

A As I explained early on, it was boxed up and mos of the stuff was in the basement; some of the stuff was in the country. I therefore went through as best I could different organizational material and files. The heavies single file I had was the group research, and a folder on Mr. Buckley and, fortunately, the first batch I was able t come upon before I even found any of that stuff was stuff which I had pulled out and was in the folder under Wild Tongues, along with correspondence with the publisher and whatnot, which was in another file in connection with my publications, which I found right away.

As I have indicated, there is other material which I just couldn't get to, so I had to rest with what I had.

Q My question was, you saw some journals, more th one, but not all. I am not sure what journals you saw or

what period of time they covered.

THE COURT: You are talking about journals now?

MR. MAHONEY: Yes.

A What I was looking for, of course, was what I had in my records on Mr. Buckley and his various associations which would be his column and the National Review.

Then I remembered, of course, that he had this peculiar connection with Church League of America, so I dug out what I could find there.

Then I remembered that it was the John Birch Society which had launched the attack, and I went back through as best I could, but I never did find the copies of the John Birch Society Bulletin which I have, I had to go find them in the library.

Q Doctor, maybe you just don't know the answer to this, and if so, say so, but I am trying to find out. Your journals are apparently arranged chronologically --

A I beg your pardon. You mean my personal journals?

Q Whatever it is you take your notes in.

A I thought you meant journals, magazines.

Q No, we misunderstood each other. In Exhibit 19 you pulled some things together out of a journal.

A Right. I have in my possession someplace some dozens of -- as a matter of fact, I have an example of it

right here. I have been keeping some notes here. When I get a chance, when I am traveling or sitting in a lecture or something, I write in a journal.

Do you want to see an illustration of what I mean? May I?

Q Surely.

[Pause]

THE WITNESS: That is the journals that I guess we are talking about. They are just notes, most of them. Sometimes I write the first two paragraphs of an article, sometimes I write the outline of a sermon; sometimes I write what I read in a newspaper. It's what is called a common-place book. It's to help you to try to remember things.

Those notes to which you refer, Mr. Mahoney, are excerpted from I think three copies of three of those which I was able to find. I didn't find all of them and, therefor probably if I had had time to go through them and find them, I would have come up with some other notes I had made on Mr. Buckley. But --

Q The three you found, what period do they cover?

A They are very miscellaneous, you see.

Q Do you know what period they covered? This appea to be arranged chronologically.

A Yes, I have several dozen of them which are

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chronological. But when you pack up your seminar you don't get them in the one, two, three; you just get them miscellaneously, of course.

Q The three that you found and reviewed, what period did they cover, if your recall?

A I don't recall. We have to look at the dates. In some cases I didn't even have dates, as I remember, because I tried to remember --

THE COURT: 19. Do you want to look at 19?

THE WITNESS: I tried to remember to put the date down on the page, but sometimes I don't.

Q Is your recollection refreshed by reference to Exhibit 19 with regard to the periods covered by these journals?

A These aren't all from the journals, remember. Some came from slips of paper which I just described and dropped in the file. Some of them are journals in this sense and some of them were just scratched notes that I dropped in the file.

Q All I am asking is, referring to this, does it give you -- are you any clearer after looking at 19 as to what periods the journals cover?

A Well, if we take, for instance, 6/6/68, WB using JBS plates for advertising NR. I remember that case.

Professor Frank Wright on the faculty at Iowa Wesleyan College who had written a dissertation on extremism in America came to me and pointed out that he had received an envelope advertising the National Review which came from Peoria, Illinois, and the plate was the same, you know, those metal -- Addressograph plates was the same; you could tell by how the letters were formed and certain breaks, as mailings he was getting from the John Birch Society office in Peoria, Illinois. So this must have in June of '63 that that came to my attention.

Whether it was written into the journal or written into a slip which I dropped into the file, I'm not sure. On the things which were published, now, there are some notes here like National Review 11/19/63 on November 6 before Diem was buried, James Reston used his New York Times column to present the program of the Yalta faction. Whether I read that in '63 or read it in '68, I'm not sure. Or whether I never read it at all, but a student quoted it in one of his papers and I copied from the paper.

That I do, too, when I get good quotes, sometimes, on term papers.

Q Dr. Littell, you included a statement here, page at the end of the sentence, of the pickup sentence we have been discussing -- I am sorry, no. Nevermind. We will get

to the next one.

When you were discussing the Gasky column -- excuse me, the column "Who Are The Totalitarians", you said that that column quoted from Gasky, erroneously quoted from Gasky. Do you recall that testimony?

A Well, I remember that at that time I thought there was one use of Gasky, but subsequently we have established that there were two uses and --

Q That is the August '67, is that right, or are you talking about "Who Are The Totalitarians"?

A Plaintiff's Exhibit 14, August 15, 1967.

Q We have that clear. That is the August '67.

A Attributes to me things which I didn't say; mostly, which were taken from the Gasky column, right?

Q Yes, we have that. Now I am asking you, I believe you testified that that was also the case in the column "Who Are The Totalitarians". Is that your testimony?

A [No response]

Q Whether you recall or not, is that what you want to say? Is it your position that the column "Who Are The Totalitarians" quoted from Gasky?

A When I made my deposition I was remembering only one use of Gasky, and now as we reconstruct the record it's obvious that there were two uses of Gasky.

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THE COURT: What were the two uses?

MR. BLASBAND: Judge, if I may, I'm not sure that this witness, it is proper even to ask this witness whether Mr. Buckley copied from Gasky. Obviously, this was not a product of this witness's writing. It was Mr. Buckley's writing.

THE COURT: Fine. What are you asking, Mr. Mahone whether he believed -- he, Dr. Littell, believed there were two items used in Gasky? I guess that is about all he coul testify to, isn't it?

MR. MAHONEY: Yes, that is part of the basis in either 19 or 20.

THE COURT: I don't know where we are.

MR. MAHONEY: He had testified as one point, we started to go into this. He had testified that in his judgment, the basis for his claim of the Buckley misquotes, among other things, as I recall his testimony this morning, he testified that Buckley repeated the practice of quoting Gasky instead of Littell, in the column in 1968, and I'm just asking him whether that is the case, whether that is the assertion; and, if so, to point out the quotations to u

THE COURT: Dr. Littell, do you claim that the February article "Who Are The Totalitarians", was based in part on Gasky?

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THE WITNESS: It was. Mr. Buckley wrote me and said that he was going to write on the basis of the Gasky column. And I wrote back special delivery and said, don't do it.

THE COURT: Didn't you send your speech?

THE WITNESS: I sent it twice.

BY THE COURT:

Q But you sent it in January, did you not, before this February article?

A I think that's right.

Q Do you claim that in spite of sending your speech twice, Mr. Buckley based the February article on Gasky?

A In part on Gasky, yes.

Q In what way?

A That was certainly my impression.

Q In what way?

A "The question was asked most provocatively by Dr. Franklin H. Littell last summer at the meeting of the National Education Association." By then I knew that I hadn't been there.

Q But somebody said that you --

MR. MAHONEY: Your Honor, I found a reference also. Item 5 in Exhibit 20, that ties into this. Buckley column reduced to newspapers based on Gasky knowing that column

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was false and slanted the same way. That is the other reference besides this morning's testimony.

THE WITNESS: Right. So the first thing is that it is still said that I gave the speech. Then "Dr. Littell, president of Iowa Wesleyan College, is himself an abusive rhetorician who unguardedly accepted the national chairmanship of an organization nobody has ever heard of, called the Institute For American Democracy. It is the successor to the National Council For Civic Responsibility" --

THE COURT: The Gasky article didn't say all that, did it?

THE WITNESS: This is the article that we are discussing.

MR. MAHONEY: We want to know in what way it is based on Gasky.

THE COURT: Mr. Mahoney is asking you in what way do you claim that that column you have in your hand, "Who Are The Totalitarians" is based on the Gasky article, rather than your actual speech text. Is there anything that would indica that?

THE WITNESS: In the first place, that he went ahead and said that I gave the speech. But he was depending on Gasky for that.

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BY THE COURT:

Q Was the speech read, that press release by your colleagues --

A Baker says no. I had not supposed so, and I don't know. If it has been read, I don't know today. I mean, that was the first meeting matter having it read and called to my attention. I didn't think it was.

Baker thought it was, obviously. "Then he will lump together Hargis, Bundy, McIntyre, Welsh and Gerald L.K. Smith, which is not the way it was done. "And then he will refer to them as composing the fascist underworld." Which I did not.

BY MR. MAHONEY:

Q Dr. Littell, is any of this based on Gasky, that is what I am asking you?

A Yes.

THE COURT: Here is Gasky, 16B. Why don't you take a look at that.

A If you mean literally quotations, I'm not sure. The fact that he went ahead. He quotes Gasky in the first one.

THE COURT: In what? The National Review, the Littell item?

THE WITNESS: Yes, the Littell item.

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He quotes Gasky here --

A Yes, that is what I am trying to establish.

THE COURT: What difference does it make? I don't know why we are spending time. You are asking the questions.

MR. MAHONEY: I understand. Your Honor, he has said that part of the malice of Buckley is that Buckley quoted, this morning he said he quoted Gasky (ie) instead of Littell, after Littell said in the speech, he based the column on Gasky knowing that is without foundation --

THE WITNESS: One of them is, he goes right ahead like Gasky (ie), implying that my criticism was directed solely toward the radicalism of the right, which is the most serious misrepresentation of the whole situation. The second place, he goes ahead and states that the speech was given, obviously based on Gasky (ie), even though he knew that it wasn't; I had informed him that it wasn't. And now you are asking me, are they direct quotations, and I will have to read the two of them to see if they are direct quotations. We wouldn't know anyway, because here, you see, for instance, there is a quote, "It is another thing in an age," this is Gasky (ie), "It is another thing in an age of mass media and electronic opinion forming to sloganize the rights of the communists or fascists to the detriment and destruction of constitutional order and due process."

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From the Buckley column, "It is another thing in an age of mass media and opinion forming to sloganize the rights of the communists or fascists to the detriment and destruction of constitutional order and due process."

Q They are both quoting your speech, isn't that right? They are just quoting the same passage from your speech, is that correct?

A Whether Mr. Buckley took this from Casky (ie) or from the text he had of my supposed, or planned speech, is not the point I am making. The point I am making is that he went ahead, a la Casky (ie), in a very slanted way and said something happened that didn't happen.

THE COURT: Said what happened that didn't happen?

THE WITNESS: That I gave a speech that I didn't give, and he knew that I didn't give it.

THE COURT: I guess another thing in the article of Buckley, he emphasizes exclusively your dealing with the radical right, he doesn't indicate you tried to deal with the radical left; isn't that your other point?

THE WITNESS: Right. He even says that the purpose of HHH and HUD is to harass the radical right, which is from the March 28 issue of National Review, which he knows is not true. I have already said, and this is important, I think, that it wasn't until I reconstructed this sequence

of events that I realized that he had used Caskie twice, that he was blurring the original Caskie thing with the fact that he went right ahead and used Caskie.

THE COURT: All right. Let's get on with it. What else do you have?

Q Referring to News and Views, the publication of the Church League of America, I believe you said you thought it might have been a front for the John Birch Society, you weren't sure?

A Right.

Q If it were a front it wouldn't be openly fascist, would it?

A Well, I think I said, and I feel at this moment as I did then, that sometimes I am tempted to think it is and sometimes I am tempted to think it's a front. But I am not prepared to swear that I believe that it is an openly fascist one hundred percent or I am not a hundred percent convinced, therefore, I guarded my language.

Q Guarded your language where? You mean generally in referring to it?

A In referring to it, yes.

Q You didn't refer to it this time, it was not your habit to refer to Church League of America as openly fascis in 1969?

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A I don't know whether I did or not. I have certainly been tempted to think so and I might have at some occasion let her fly. But I don't recall at the moment.

Q In saying that Buckley picked up items from the openly fascist journals, in that context and setting would Church League of America in your mind qualify as an openly fascist journal?

A I wasn't sure whether he picked it up from them or picked it up from the Bulletin of the John Birch Society.

Q Whatever you thought about the John Birch Society, did you think at that time that the News and Views is an openly fascist journal?

A I have been tempted to think so. But I don't think I put it in writing. And I'm not sure at this moment whether I would -- sometimes I am inclined to think so and sometimes I think, well, maybe that is not quite the role that it plays.

Q Did you this in mind when you were writing about Buckley picking up from the openly fascist journals, was it in your mind that News and Views was one of the journals you were referring to?

A It was in my mind that at a certain time and with IAD and me as the targets there was a coincidence of attack and even a coincidence of language which was more than happenstance. You are asking me my mature judgment. When

I was writing fast I wasn't examining every measured word, every measured sentence. My mature judgment is that the John Birch Society is a fascist organization. I would be willing to lay my head in the fire for that, as they say, but do I think Edgar Dundy and his outfit are openly fascis I don't think I would want to say that or swear that. It's not something that I am that sure about. I think that is is very close to it.

Q When you referred in that sentence to openly fasc journals, what journals did you have in mind, that Buckley picked up items from?

A We are not talking just about this, we are talkin about the whole thing.

Q I am asking you what journals you had in mind. You must have had something in mind and I am asking what yo had in mind?

A Well, as I mentioned earlier it had been pointed out to me that at different points that this coincidence existed between Mr. Buckley's column and the National Revie news items, supposedly, but you corrected me on that; you told me they are not all written by him, but he is still editor. Therefore, I wasn't thinking just of the John Birc Society Bulletin or just of the News and Views; I was think ing of this coincidence which was very general and on a

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number of issues which I can mention. I have got eighteen or twenty issues here which were discussed and everybody discussed repeatedly and which have been in my mind when I say that Buckley's line is remarkably coincidental with that of the John Birch Society and that of On The Right.

THE COURT: The question is, when you wrote the passage that the National Review and On The Right frequently pick items and frequently picked up from the openly fascist journals, what fascist journals did you have in mind? I'd like to have the name.

THE WITNESS: I think the John Birch Society monthly Bulletin is the most important and influential of all these journals, just as the Society is the most powerful of all the gravitational centers.

BY THE COURT:

Q Just to save time, we are getting to the end of this, the question is simply what are the names of the openly fascist journals you have in mind when you wrote that sentenc You must have had specific journals in mind, did you not?

A The journals that I had mostly in mind were the Bulletin of the John Birch Society and News and Views of the Church League of America. But duplications or syncopations have been pointed out to me in other journals too. Either they copied something that Buckley had said or Buckl

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came out saying practically the same thing they said, and the exegesis of this is something I cannot at this time reconstruct in terms of what six years ago was the case.

Q What are the names?

A Well, I started to point out how the thing worked.

Q I think we know how it works, Doctor. The question is, what are the names of the journals?

A You are asking me do I remember exactly items which were called to my attention or which I ran across --

Q No, we are asking what are the names of the journal It's a very simple question. What journals did you have in mind?

A I had in mind dozens of some of journals and magazines and newspaper columns, and so forth.

Q Could we have their names?

A I have already given them. The New Reformation, and Hargis, I can show you that if you want to take the time and these emphases and interpretations ran like wildfire so that in a matter of two or three weeks they would appear in the whole batch of them.

THE COURT: I think he really gave these this morning. I asked him the name. Let's go.

BY MR. MAHONEY:

Q Doctor, I want to refer next to the first sentence

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in the next paragraph "Buckley has been caught out for misquotations, with quotation marks, and for repeating radical right malice and rumor, but he never admits a mistake or apologizes to the victims."

This is the subject matter of a discussion with Mr. Klagsbrun on two different occasions, was it not?

A I don't remember. Even when Mr. Klagsbrun and Mr. Alexander were here I was trying to remember what I remembered, and some of it I remembered. But much of it I didn't, the details.

Q Let's get at it this way: Will you tell me, starting first with your meeting with Mr. Klagsbrun when you came to New York, will you tell me everything you remember about that meeting; who was present, where it was held, and what was said?

A Well, the first time that I remember is that he got a call from Ron Henderson, I guess, in which essence this is a kind of hot political argument, we think we ought to turn it over to counsel. That hadn't occurred to me, but I remember saying that sounds like a good idea. And then, when I came to New York, Mr. Henderson, we must have made a date, in any case, Mr. Klagsbrun and Mr. Henderson and I were there. And Mr. Klagsbrun explained to me that there were some things which would either have to be changed or

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backed up so that he was assured that I know what I was talking about.

The only one that I remember for sure in the discussion is that I was supposed to supply some information about McBurney and on Buckley, and I was to get the permission of a lady in Cedar Rapids before I printed her letter, but it's at least good form if not legally required that you do that.

Then some other things were mentioned including -- no, it wasn't then. We discussed the thing in general. I didn't like the idea of changing my manuscript, and I argued for about five minutes, probably, maybe two minutes in a proprietary fashion, but I remember him saying that I was using a term either slander or libel, I forgot which it was -- which was it?

THE COURT: Slander.

A And he said that is a legal term and you don't know what slander is legally, so you better find something else. So that sounded reasonable enough and I said okay. Then Henderson and I talked a bit about some other things. I remember I stayed after Mr. Klagsbrun left.

Then I came back to New York a second time --

Q Before you came back, you provided some documentation or your secretary provided some documentation --

A He made a memo or I received a memo from Henders

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which Klagsbrun had helped, more or less a memorandum of the conversation. And at that point I knew what he wanted. It was not prepared all at once, I remember that, because -- you will think I move all the time, it isn't quite true -- but I was in the process of a move and I wasn't able to find immediately everything which we were talking about.

Anyway, when I came back to New York I went to Mr. Henderson's office and he took me over to Mr. Klagsbrun's office, which was another office -- it was the old office, I heard him refer to it. I didn't know the way, and he just took me over there, and we talked some more about the same subject. I don't remember how long and I don't remember how much material was in hand by that time.

I remember the last thing which we got in, was sent in by Jan Wright, Mrs. Wright, my secretary. And I think that was probably after the second meeting, although I'm not absolutely sure. But the dates will indicate that.

Q And then you made some changes. Are these the changes, the ones indicated on Exhibit 39 that were made as a result of your various conferences with Mr. Klagsbrun?

A I assume they are. That is not my writing, but we --

Q So that then ended with the statement, "Buckley has been caught out for misquotations, with quotation marks,

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and for repeating radical right malice and rumor, but he never admits a mistake or apologizes to the victims."

What did you have in mind when you talked about misquotations, with quotation marks?

A Well, with quotation marks is an expletive. The misquotations is very general. Of course, I have in mind the fact that he's been criticized by a number of people on a number of occasions for it, all the way from God And Man At Yale, through to the present day, I imagine.

Then, when I said in quotation marks, I was thinking particularly of my own experience which had to do with the Gasky item.

Q His quoting of Gasky instead of you?

A And refusal to correct it.

Q What about the statement repeating radical right malice and rumor? What was that based on?

A That was based on these spotting cases to which I referred, about different people and different issues, and so forth.

Q The same basic backup as for the pickup sentence, in other words?

A Yes. It would be the same body of material.

Q Then "he never admits a mistake or apologizes to the victims." What was that based on?

A That was thinking of Mr. Baker's protest and my own protest and what I had heard of other people saying.

Q What other people?

A Well, I think Mr. Buckley has a general reputation as a hard hitting polemicist who doesn't back down very often.

Q You said other people; were you relying on anything anybody had specifically told you or something you had read or some general reputation, or what?

A I was just relying on my general impression built up over a period of time.

Q And the next sentence starts, "Like Westbrook Pegler who lied day after day in his column about Quentin Reynolds and goaded him into a lawsuit." Why did you think Buckley was like Westbrook Pegler in that respect?

A Because he made obsessive pursuit of certain persons.

Q Had he lied about them?

A I think that when you publish a half-truth, yes, you are lying about somebody. Or when you shade the thing so heavily that you are telling something false about that, yes, you are lying about them.

Q You mean misrepresenting their views?

A Yes, in a way which is just a little misrepresenting or a little shading is not of course a lie. But if you

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really set out to say something about a person that isn't true, and to do it again and again and again, and obsessively that I would say falls within the general category of lying.

Q What did you know about Pegler and Reynolds, that controversy, when you wrote that?

A All I knew is that Pegler had day after day and obsessively pursued Quentin Reynolds.

Q Do you know what he said, what kind of lies he said about Reynolds?

A I don't recall now. I did then, because I had read it about that time; that is how that phrase got in there some kind of a paperback report.

Q You mean Louis Nizer's book?

A No, it wasn't Louis Nizer's book at all. It was a book which was about the Reynolds case. I can't remember what the book was, but it was a paperback. I didn't even know Louis Nizer's book had that chapter which is referred to in here in this room until much later.

Q Then you were at the time familiar with the charges that Pegler had made against Reynolds; you had read a description of them?

A Vaguely, yes.

Q When did you read this other paperback?

A But it was the pursuit, you know, the obsessive

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pursuit which made the thing flicker in my mind.

Q When did you read the paperback? Do you remember the name of the book?

A I don't. And I don't remember for sure whether it was a book that dealt only with that case or whether it was some book about law cases and that was a chapter. And it was just by chance that I even threw that phrase in. I might just as well not have, but it just happened to come up as I was writing.

What I was writing about was that Buckley's unfairness and contentiousness and misrepresentation of a number of people, and I was thinking of Dorothy Day and Martin Luther King, Jr., and Martin Busty, and so forth, that they could have hauled him into court and it would have been a good thing if they had.

But then I said wait, this obsessive pursuit of certain people is like Westbrook Pegler's pursuit. I didn't say, I'm sorry that persons with good judgment think I said it, that he lied. That is not what I wrote. It was in the back of my head, certainly, in part. If I wanted to say that, I would have said, like Westbrook Pegler, William Buckley lied day after day. But what I had in my mind was this obsessive pursuit of certain persons, goading them.

Q You said it was in the back of your mind that he

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lied, is that right?

A Well, I think he did. He lied about me and he lied --

Q But you weren't thinking about you.

A He misrepresented in a way which certainly in the broad sense is lying, the position of A.J. Musty and Dorothy Day and Stringfellow Barr and -- a whole number of people here. Robert Kennedy and a lot of people he didn't like, and he was after at every opportunity.

Q What were the lies? Pick out any one of them. Dorothy Day, how did Buckley lie about her? What did you kn about her?

A Dorothy Day converted from communism in 1934 --

THE COURT: How did Buckley lie about that?

THE WITNESS: We have that document in evidence. He lied about her and about A.J. Musty by presenting them as fellow travelers of communists.

Q Let us get a reference here.

THE COURT: 65.

[Pause]

Q You have referred to A.J. Musty, Stringfellow Barr and Dorothy Day. I am referring you know to Plaintiff's Exhibit 65. Is this what you had in mind?

A Yes, that was one item, although there were

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several items on A.J. Musty. But this is National Review, June 29, 1957, Plaintiff's Exhibit 65 in which -- it is entitled Front Bulletin, and the reference is made to a gathering at the Community Church, and then a snide remark about the Daily Worker's reference about the Community Church, and then to hear speeches of pacifist fellow travelers A.J. Musty and Stringfellow Barr, by Miss Dorothy Day, editor of the anarchist Catholic Worker, and Conrad Lindt, whom I don't know.

Finally the Reverend Mr. Musty led the procession of communists, and so forth. The whole setting of the thing is to say they are fellow travelers of the communists, and that is not true.

Q Doctor, you have had a lot of difficulty this morning recalling your state of mind five years ago when you wrote this book. Are you telling us that at the time you wrote this passage in 1969 you had in mind as justification for the assertion that Mr. Buckley lied, something that appeared in the National Review in 1957?

A What I am saying is that I was aware that he had attacked and misrepresented the position of a number of people whom I knew personally. I knew three of those four personally, and respected. And he did the same thing with Martin Luther King, Jr., whom I admired very much and knew

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personally.

Q How did he lie about Martin Luther King, Jr.?

A We have several items I brought in here on what he had said and written about Martin Luther King. For instance, just yesterday we were discussing one of them in which he attributed anarchy and violence in the United States to Mario Savio and Martin Luther King, Jr., and in another item which we had earlier, he concluded that America was headed for a season of open violence if King's leadership prevailed, and so forth.

I considered a gross misrepresentation in the general sense it is a li .

Q Are you aware that Westbrook Pegler at this time had accused Quentin Reynolds of sexual misconduct, I believe if I recall some of the columns correctly, and gambling naked with people of another sex; that he accused him of cowardice; that he accused him of war profiteering; that he accused him of proposing to a widow at her husband's funeral, were you aware at the time that these were the kind of things that Pegler had said to Quentin Reynolds?

A No, the one thing that I remember that I remember six years ago was that he accused him of cowardice and rode that pretty hard. The other things would be more or less vulgar gossip, anyway. But a man who is a war correspondent

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would naturally resent and be goaded by the charge of cowardice.

Q Do you know of any situation where Buckley, aside from these political quarrels where you say that he has misrepresented somebody's views or position, do you know of any situation where Buckley has said false, personally obnoxious things about people, of the type that Pegler said about Quentin Reynolds?

MR. BLASBAND: Objection, your Honor. We haven't established what Pegler said about Quentin Reynolds, and I think the question is objectionable unless we can get some specifics in the question as to what Pegler said about Reynolds.

THE COURT: I guess we can get specifics by introducing some of those items which describe what Pegler said about Reynolds.

Dr. Littell said he was not aware of those specifics.

MR. BLASBAND: That is correct.

THE COURT: He also said that he did see a paperback with a chapter about it, so I have got to assume that in fact he did know some detail about that case. He said he read a chapter about it. I don't know the name of the book --

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THE WITNESS: I would say two things, your Honor. One of them, you are assuming that I remember more than I remember. The only thing I do --

THE COURT: You told us you read a chapter about that. Even though you may not remember the substance.

THE WITNESS: Right. The thing I remember is that Pegler hounded Reynolds, calling him a coward.

THE COURT: Your book uses the word lied, not coward. I assume by reading the chapter, you knew the nature of those lies then, rather than remembering them now, isn't that right?

THE WITNESS: I think it is a reasonable assumption.

THE COURT: Then if you get into evidence some statement of the nature of those lies, then it seems to me that it is fair to question the witness about that.

MR. BIASPAND: I have no problem about that, your Honor. My objection is to the form of the question.

THE COURT: I will sustain the objection.

THE WITNESS: The second thing, your Honor, is this: It would be wrong to assume a measured use of that phrase, as though I sat there and thought, well, now, how can this Pegler-Reynolds case be used. It wasn't like that. It just came to me all of a sudden that that kind of hour

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is something that I remembered in connection with Pegler's contact.

THE COURT: You didn't use the word hounding; you used the word lie. It may have been done quickly by you, but it's there and I think you have to be examined about it. I think we have the identification exhibit of My Life In Court, up in my chambers. I haven't looked at it, but my Clerk has.

MR. MAHONEY: I haven't it physically here, but I would like to offer it.

THE COURT: I think we ought to get it. I make no bones about it, I take this reference to Pegler and Reynolds very seriously and I think anybody who read this book in 1969 would very likely have taken it very seriously. This is a notorious case.

I am permitting questioning about it, and I will see that we get the book here and you can question after the recess.

[Recess]

THE COURT: We will adjourn until tomorrow.

[Adjourned to June 14, 1974]

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William F. Buckley, Jr.,

-vs- 70 Civ. 2844

The MacMillan Co., et al.

New York, New York
June 14, 1974--10:30 a.m.

P. Griesa, D.J.

[In open court]

MR. BLASBAND: Your Honor, in view of the discontinuance against MacMillan, I respectfully apply for the following relief: That the MacMillan name be stricken from the caption of the case. Mr. Mahoney has agreed to this relief subject, of course, to the Court's approval.

THE COURT: Did we act too fast? Is there any right of Dr. Littell to hold MacMillan in the case for contribution or anything like that? He is not represented by an attorney.

MR. BLASBAND: May I approach the bench off the record?

THE COURT: Yes.

[Discussion off the record]

THE COURT: Let's put this on the record. As the record shows already, there was a settlement agreed to yesterday between Mr. Buckley and defendant MacMillan and Company. There has been no settlement agreed to between Mr. Buckley and Dr. Littell, the other defendant.

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Dr. Littell, as we know, is representing himself pro se. There is a motion this morning to strike the name of MacMillan and Company from the caption, and that is the relief requested, is it not?

MR. BLASBAND: Yes, your Honor.

THE COURT: Now, before MacMillan is finally dismissed entirely from the action, I raised a point as to whether Dr. Littell has any rights against MacMillan and which would be abandoned or terminated wrongfully by letting MacMillan entirely out of the action. There is no question that Mr. Buckley can settle his dispute with MacMillan. The only question is whether there is some right which Dr. Littell has against MacMillan.

Now, Dr. Littell does not have an attorney. Mr. Blasband, who is representing MacMillan, I must say has indicated in fairness in every way with respect to Dr. Littell's position in the case, has shown me the agreement -- called my attention to the agreement between MacMillan and Dr. Littell which is in evidence.

That agreement provides in part as follows: "The author, namely Dr. Littell, guarantees that he is the sole owner of said work and has full power and authority to copyright the same and to make this contract; that said work does not infringe any copyright or violate any property

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rights or other rights nor contain any scandalous, libelous or unlawful matter, and that the author will defend, indemnify and hold harmless the company against all claims, demands, suits, loss, costs, damages and expenses that the company may sustain or incur by reason of any scandalous, libelous or unlawful matter contained or alleged to be contained in said work or by reason of any infringement or violation or alleged infringement or violation by said work or by anything therein of any copyright or property right or other right."

Now, this language is contained in an agreement dated January 2, 1972, between Dr. Littell and MacMillan and Company.

MR. BLASBAND: That is 1962, I believe, Judge.

THE COURT: '62, I'm sorry. And the work listed in the agreement is a work entitled "A Primer On Communism For Churchmen."

Do I understand this agreement was later amended to provide for the worthwhile --

MR. BLASBAND: Yes, your Honor. The agreement immediately next under that exhibit is the amended agreement which the parties have stipulated to and I can represent to the Court does contain the agreement.

THE COURT: There is a document dated October 20, 1970.

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MR. BLASBAND: That is for "Wild Tongues" among two other works.

THE COURT: The caption has "Wild Tongues' agreemen dated January 8, 1968."

Where is that agreement?

MR. BLASBAND: I was advised by MacMillan that should have referred to January 8, 1962.

THE COURT: It is the same one?

MR. BLASBAND: Yes, your Honor. The second agreement, the one you just referred to, has a provision that prior agreements are otherwise ratified.

THE COURT: Dr. Littell, the work that was referred to in the January 8, 1962 agreement as "A Primer On Communism For Churchmen," was that the work that later became "Wild Tongues"?

DR. LITTELL: Yes, sir.

THE COURT: In view of that I think I would have to say, Dr. Littell, that there is no basis I feel which exists for any claim or right of action by you against MacMillan for indemnity or contribution.

In view of that I will grant the motion to strike MacMillan's name from the caption.

I have already signed the stipulation.

MR. BLASBAND: Thank you, Judge.

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THE COURT: I think that clarifies your position, Mr. Blasband. If Dr. Littell is willing, and I certainly am willing, I will be happy to have you assist in the case. I know it is a little informal, but it is just a matter of assisting to bring out the relevant facts. And if you feel disposed to do that, why I certainly will be pleased to have you.

MR. BLASBAND: Thank you, your Honor. I appreciate the compliment.

I would like the record to be clear, though, that I am here not for MacMillan, I am here as David Blasband as an officer of the court.

THE COURT: All right.

MR. BLASBAND: Your Honor raised a potential problem and you have given us the benefits of the Court's advice as to how that problem will be disposed of.

There is another possible situation which the Court and the doctor should be alerted to. I don't know if it is a real problem or not. Because of the indemnity the company, it would seem to me, would have the right to ask Dr. Littell and require Dr. Littell to reimburse the company for its expenses in this case. I have no idea of whether the company is going to do that, whether it is not going to do that, or whether it is even going to entertain the notion of doing

it, but if it did do so, I would like the benefit of the Court's thinking as to whether I would be compromising MacMillan by even being in this position.

THE COURT: I take it from here on out the services that you rendered for MacMillan and in this trial and prior to the trial might be the subject of a claim under the contract. That is just a matter of contract.

Now, the services that you render from here on out are clearly not subject to that contract.

MR. BLASBAND: That's correct.

THE COURT: And you don't intend to bill MacMillan for them?

MR. BLASBAND: Not a bit.

THE COURT: If MacMillan agreed to pay them, it would certainly be services outside of that contract.

MR. BLASBAND: Right, that's correct, your Honor.

THE COURT: So I don't really think we have a problem.

MR. BLASBAND: I was referring to the possible request of Dr. Littell that he reimburse MacMillan for the legal expenses incurred by MacMillan up to this point.

DR. LITTELL: That depends on the Court's decision.

THE COURT: You are talking about the claim of MacMillan to get Dr. Littell to reimburse.

MR. BLASBAND: That's right.

THE COURT: But that is past. Those services are rendered and whatever legal rights there are to recover for those services, that right, whatever it is, is vested right now and that is it.

MR. BLASBAND: Here is my problem, Judge: I would not like it, of course, and it might be quite embarassing if, hypothetically, Dr. Littell -- there was a judgment against Dr. Littell and Dr. Littell then says to MacMillan, if MacMillan were to ask for reimbursement, Dr. Littell say that there shouldn't have been reimbursement to you because your lawyer in effect was responsible for the judgment being assessed against me. If Dr. Littell tells me that is not going to be a possibility, then there will be no problem.

DR. LITTELL: I assure Mr. Blasband that I trust his integrity completely and I have no --

THE COURT: The only thing Mr. Blasband can do is he might think up factual things to bring out that you might not think of, and so forth.

DR. LITTELL: Yes, your Honor.

THE COURT: Let's go on on that basis.

MR. MAHONEY: I would like also, because we keep referring to doing this in futuro, I would like to ask Mr. Blasband to give us these circulation figures so we

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don't conclude the case without them on the record.

THE COURT: If I write a decision in this case, which I believe I will, I don't guarantee to keep the name of MacMillan out of the decision.

MR. BLASBAND: I understand.

THE COURT: If it is necessary to mention the role of MacMillan in the decision and the role of counsel as part of the narrative, which I believe it will, I will do it and make any comments I deem appropriate; okay?

MR. BLASBAND: I understand.

Your Honor, the stipulation, as far as the circulation figures of the book, will be as follows:

First, the work was taken out of circulation at the time the claim was brought; that is, the time the lawsuit was instituted.

THE COURT: What was that date?

MR. MAHONEY: The summons is dated July 1, 1970, your Honor, and filed July 1, 1970.

THE COURT: Say July 1, 1970.

MR. MAHONEY: It was probably served a few days later.

THE COURT: That is immaterial.

MR. BLASBAND: On the hardcover edition of the book the net sales were 941 copies, producing net revenue

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to MacMillan of $3,271.

The paperback edition --

THE COURT: What is meant by "net revenue"?

MR. BLASBAND: That is how much they received. They sold the book -- there may or may not be a cover price less a discount to the bookseller.

THE COURT: This is the price MacMillan gets back?

MR. BLASBAND: That's right, your Honor.

As far as the soft cover edition of the book it sold 3,226 copies, producing a net dollar revenue of $6,428

THE COURT: Give me the figure again.

MR. BLASBAND: The number of books sold was 3,226 and the net dollar sale figure was $6,428.

THE COURT: All right.

MR. MAHONEY: Over what period of time was this? What was the original date of publication?

MR. BLASBAND: October 6, 1969.

MR. MAHONEY: Then simultaneous means that's both hardcover and paperback?

MR. BLASBAND: Yes.

THE COURT: October what?

MR. BLASBAND: October 6, 1969. Your Honor may want to know from Dr. Littell whether he ever received any royalties on the book. Frankly, I don't have that infor-

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mation.

THE COURT: Did you?

DR. LITTELL: No.

THE COURT: Is all that stipulated all around? Is that stipulated by you, Dr. Littell?

DR. LITTELL: I just thought of something. I think I received an advance which would be against royalties. So technically I did receive it.

THE COURT: Was that an advance for a number of books or just "Wild Tongues"?

MR. BLASBAND: Maybe I can help by looking at the contract, Judge.

MR. MAHONEY: I think the last one revises the advance situation.

MR. BLASBAND: The first contract provided for an advance of $500, which I assume you received, Dr. Littell?

DR. LITTELL: Yes, that would be all I received of royalties because I didn't receive anything later.

THE COURT: Is the stipulation about circulation, dates, number of copies, revenues, and your advance of $500, do you stipulate those facts?

DR. LITTELL: Yes. I think some of those were review copies probably, weren't they? I mean we did have ten or twelve reviews.

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THE COURT: You don't sell review copies, do you?

MR. BLASBAND: There may be review copies in there.

THE COURT: Anyway, those are the total figures?

DR. LITTELL: Yes.

THE COURT: You, Mr. Mahoney?

MR. MAHONEY: Yes.

THE COURT: Let us go on with the examination.

MR. MAHONEY: Do you have any knowledge beyond to which we might stipulate, beyond what is in that as to the nature of the buyers of the book, where they ultimately ended up?

MR. BLASBAND: I don't know. I can only give you suspicions that they would be general trade buyers, Mr. Mahoney.

THE COURT: Let's go on.

F R A N K L I N H. L I T T E L L, resumed:

DIRECT EXAMINATION CONTINUED

BY MR. MAHONEY:

Q Doctor, I want to refer you to Exhibit PX19. I believe we have a date problem here. I refer you to 1-28-6 a typical editorial "Versus The Establishment" parallel JBS "With Ideology Running Rampant Throughout," pages 50-51. This has been marked Plaintiff's Exhibit 110 for Identifica

I show you pages 50-51 of the National Review

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dated January 28, 1964, rather than '68, an editorial headed "The Dialogue Begins," and I ask you whether this is the editorial you have reference to in PX19?

THE COURT: This isn't in evidence, is it, yet?

MR. MAHONEY: No, it isn't.

A You think the date was wrong in that?

Q I think the '68 was wrong and we are talking about '64, in view of the subject material of this and the pagination and our inability to find in '68 anything that corresponds.

A I don't really remember that much about it. I mean do you want me to indicate what I think is ideological language?

Q The first question is whether, taking into account the page 50-51, that that reference is right and the January 28 reference is right and that the liberal establishment is the subject matter, the first thing I am trying to establish is whether this is the editorial to which you have reference here? I will represent to you that we have looked at January 28, 1968, at pages 50 to 51 and there is nothing that corresponds.

A Well, I think in that case it must be. Beyond that what is the question?

MR. MAHONEY: First I think I should offer 110.

THE COURT: Received.

[Plaintiff's Exhibit 110 received in Evidence]

xx Q This is rather a long editorial but there has been a statement here that this is described as "Typical editorial versus the establishment, parallel JBS." I assume that means parallel to the John Birch Society, with ideology running rampant throughout.

This is a fairly lengthy editorial. I would just like to read you the concluding paragraph of it. It is generally a commentary on at that point the recent Goldwater entry into the 1964 presidential campaign.

"In this perspective the Goldwater candidacy offers an unprecedented time of opportunity for all conservatives and indeed for all those who have honest doubts about the liberal establishment and the path which it has been leading us. We can, if we take this offered chance, communicate with our fellow citizens more widely and fully than has been possible for a good many years, and in such communications all of us have much to learn, if also something to teach.

"In this sense the Goldwater candidacy cannot lose because the American conservative tradition, of which his candidacy is an expression, will be broadened, deepened, tested, and further matured in the year that lies ahead.

That is might also win practical victory on November 3rd, as indeed it might, would be a happy bonus above and beyond what makes this job worth doing."

Now, does that strike you as reminiscent of the style and approach of the John Birch Society as it approaches itself to public questions?

A Not that last paragraph, no.

Q Well, what is there in this editorial that you find parallels the JBS? What are the parallels to which you referred to in your notation?

A You mean what I now find?

Q Pardon me?

A See, all of this stuff listed on PX19 is un-evaluated. They are just my own scratch notes. They don't mean something that I necessarily would stand to in the way I would something I published anyway. But if you want, I can go through and it will be relatively fresh because I don't remember this very well. I can pick out what seemed to me -- what I think must have at the time seemed to me as ideological language.

THE COURT: What did you mean?

THE WITNESS: I think that is an exercise on what I now would think it to be rather than what I thought it to be then.

I don't have the data from the John Birch Society contemporary literature on the basis of which I apparently at that time felt that it was recognizable stuff.

I think this is a fresh creation. I think I am doing something that I can't say I knew at the time.

THE COURT: Do your best. It may illustrate something. I think you have made it clear how you are looking at this now, and so forth.

THE WITNESS: "Our reigning ideologues have played a shrewed trick on us."

Remember, this is 1964 apparently, and this would be in the presidency of President Johnson, who certainly was a nonideological man if we ever had one.

"We debate what negotiations, pressures, and concessions to use in coexisting with communism, but leave unnoticed the question whether our aim should be not to coexist with communism but to defeat it."

They know the liberal establishment stands firm only while most of us think it firm.

Then, "The bureaucratized welfare state, catering to the appetite of the masses at home and humiliating itself before the barbarians abroad."

THE COURT: Where are you reading now?

THE WITNESS: Top of the second column -- the

first column, page 51. This is a point which was repeatedly made in the Birch Society literature, "If Goldwater suggests the supreme theater commander should have the right to use tactical nuclear weapons according to military need," and so forth, that was something which appeared -- the Birch Society was pushing for that authority for the officers in the field.

Q Was anybody else, like Hansen Baldwin of the New York Times, who was the military editor of the New York Times, do you recall whether he took that position at the time?

A I'm not sure whether he did or not. I'm sure that many people have mixed opinions on any specific point. That may be the thing which struck me all of a sudden as being an obvious Birch target, but I can't say now that it was. It is not that clear to me any more.

Q Well, is that the position about tactical nuclear weapons, was that one that was held exclusively by the John Birch Society?

A I don't think that any of the positions which the John Birch Society held is held exclusively by them.

Q Would there be people like Hansen Baldwin, a recognized expert from the New York Times, or other commentators whom you wouldn't regard as part of the radical

right who would have held that position at the time, if you know?

A If you say so. I'm not familiar with Baldwin's position, but if you say that's true, I don't doubt it.

Q Would the sequence on Buckley at pages -- the passage pages 50 to 52, where did that fit into the chronology of the authorship of the book? I mean was this inserted or did this just come in in the normal flow as you were writing your passages in this chapter, chapter 1?

A It came in in the normal flow. I think every book I've ever written I've written going through in order to try to make it hang together. But as I indicated yesterday, this is a book which was pieced together out of stuff already written in mimeograph form, and so forth, more than most of the stuff that I -- in fact, it is the only book that I've written that isn't a rather specialized scholarly work.

Q I want to refer you to Exhibit 39. The passage you submitted was the passage -- the passage your originally submitted to MacMillan was the passage without these deletions isn't that correct? In other words, in particular calling your attention to the first sentence of the last little paragraph on page 51 that originally read, "Buckley has been repeatedly caught out for deliberate misquotations and for repeating radical right malice and slander, but he never

admits a mistake or apologizes to the victim."

That was your original formulation?

A I assume so. Those are the galleys.

Q Now, what did you have in mind when you talked about Mr. Buckley being caught out for repeated radical right malice and slander?

A Well, holding people up to scorn or interpreting them or their positions in a heavily perjorative and scornful way, contemptuous way.

Q And was it the people whom he had treated that way that you thought could take Buckley to court, as you said in the next sentence of that paragraph?

A Well, that was what was on my mind, that there were some such people.

Q Now, what specific people did you have in mind?

A Well, the people he has treated contemptuously or grossly misrepresented have been mentioned here several times. There are some documents in evidence. A.J. Muste, there are several items on that; Dorothy Day, one or two cases that I recall; he certainly treated Ralph Bunche with scurrility and contempt. Whether it was something which Bunche -- well, he is a public figure so that I don't know --

THE COURT: You don't know what?

THE WITNESS: It wasn't a legal judgment.

It was a judgment, as Mr. Blasband reminded me I shouldn't use language that even suggests that I know something about the law in the technical sense.

Murray Kempton we had in which he was in effect being accused as being a communist sympathizer. Bayard Rustin, a case which I know very well because I've known him for a long time. There are several other items in there which don't come to my mind right now.

Q Are these by and large evidence that we have had at one point or another during the trial?

A That's what I mean. They are items of evidence which I don't recollect at this exact moment but which I identified when you were checking them in.

Q Did you have these specifically in mind at the time you wrote this passage?

A No. What I had in mind when I wrote the passage is that I remembered that some very good people had been treated with utter injustice and I felt that they deserved some protection or --

Q Was your predominant --

THE COURT: Just a minute. Let him finish.

They deserved what?

THE WITNESS: They deserved some protection. There ought to be some way that they could get back at Mr. Buckle

Of course, it is purely theoretical because Dorothy Day is a Sermon on the Mount Christian and she wouldn't go to court if somebody hit her over the head. Muste is an absolute pacifist. He wouldn't go to court.

It wasn't a legal judgment so much as an expression of feeling, if you will.

Q Did you also have in mind your own experience with Mr. Buckley at the time you were writing this?

A Yes, that was certainly on my mind.

Q Was that in fact the predominant memory in your mind when you wrote this paragraph?

A Well, I think one remembers what has happened to him more than he remembers what happens to others. But I would say the one that really burnt me more than anything else was the obsessive attacks and utterly unjust attacks on Martin Luther King, Jr. I was attacked much more unfairly and viciously by dozens of people than by Buckley. In spite of the fact that it seems hard to believe at this stage of the encounter, Mr. Buckley was by no means the number one person on my mind in writing this book.

Q When you say --

A Or any part of it.

Q I'm sorry?

A Or any part of it.

Q You say that you were burnt by Buckley's treatment of Martin Luther King. Was your attitude towards Buckley when you wrote these passages on page 51 one of resentment and antagonism?

A Let's see how we would term it. I would say that I disliked him and I disliked what he was doing. If you are going to put it in personal terms, that would be the fairest way to put it.

You used earlier the language "bad blood," which is ridiculous. You have bad blood between members of the same family who fall out, you have bad blood between partners who fall out, but you certainly don't have bad blood betwee people who scarcely know each other.

But I can't deny that I did not like what he had done repeatedly, as I noticed it, and that I was suspicious of what I thought was -- the role that I thought he was playin in the political process.

Q You have a reference here, I believe you testifie yesterday you had read a pocket book that included a description of the Pegler-Quentin Reynolds' case; is that correct?

A Yes. I read it fairly recently before that. That's why it occurred to me as I was going by, so to spea

MR. MAHONEY: Your Honor, at this point I would

like to offer 48, which is the book by Louis Nizer that describes.

THE COURT: 48?

MR. MAHONEY: Yes. It has been marked for identification but never introduced. It is the book by Louis Nizer which includes a description of the Pegler case.

MR. BLASBAND: I would think, your Honor, that Dr. Littell would want to object to that book. There is no evidence that he read that book.

THE WITNESS: That is not the book.

MR. MAHONEY: He has told us he cannot identify the book he did read, and this does describe the controversy. I submit it ought to be admitted for what it is worth in terms of describing the controversy which, admittedly, was fresh in the doctor's mind when he wrote about Mr. Buckley.

THE COURT: I will admit it.

MR. BLASBAND: Doesn't one have to connect that book, your Honor, to anyone who read Dr. Littell's book before it becomes of any help at all?

THE COURT: My purpose in admitting it is simply an aid in this way.

Have you made any effort to find out any pocket books? Have you called Mr. Nizer's office? He might know of other books.

MR. MAHONEY: We have been unable to find out.

THE COURT: Have you tried?

MR. MAHONEY: When we called Nizer's office, we didn't speak to Mr. Nizer. We did ask if they knew of other books around on the subject. I think they have an over-riding interest in this book, so they didn't tell us of anything else.

THE COURT: Well, nobody has come up with the book that Dr. Littell read, and I'll admit this solely to permit questioning along this line.

As we said last night, there are 150 pages on the Pegler-Reynolds case in the Nizer book, Exhibit 40, and we are not going to go over all of that, the 150 pages. But if you want to pick out the salient features of the matter and ask if this is something that Dr. Littell understood at the time, you may do it. It is just an aid in questioning. We have no other source.

MR. BLASBAND: Does the book have to be admitted for that? Can't it be just marked for identification?

MR. MAHONEY: It would seem to me we are really quibbling about nothing because I'm sure that this particul trier of fact would be entitled to take judicial notice of what is in the book anyway.

MR. BLASBAND: For what purpose? That is our

problem.

THE COURT: I'm admitting it for two reasons: It does contain a description of the Westbrook Pegler-Quentin Reynolds affair by the lawyer who apparently represented Reynolds. It is a description that that lawyer, Louis Nizer, wrote in a book which was extremely widely circulated.

Now, it seems to me that it is useful in this case to know something about the reference, the Westbrook Pegler-Quentin Reynolds reference, to define that reference.

Look, I am going to take it one step at a time. I will permit Mr. Mahoney to question about the points in the book and I will defer the question of whether to admit it into evidence.

After all, I am the trier of fact and if this were a jury trial and they were the triers of the fact, you would have a question of whether the probative value of that book was outweighed by the inflammatory effect of the book.

Well, I have purposely refrained from reading the book since it has been mentioned in this case, although I read it many years ago but haven't the vaguest memory of it. I have purposely held off from reading it.

You go on with your questioning.

MR. MAHONEY: Before I do I would like to correct the record. I did not make the phone call to Nizer's office.

I was telling you what I assumed was asked.

THE COURT: We don't have any other book at the present.

MR. MAHONEY: The only thing I said we asked about other books. If Dr. Littell did not testify until yesterday about the book, there would have been no reason to make that inquiry, in which case it was not made.

THE COURT: We will not stop the case to look for it.

THE WITNESS: May I say something?

THE COURT: Yes.

THE WITNESS: I remember last night trying to recapitulate that the book which I read, or most of it, I guess, was a paperback of chapters with different authors writing about different cases. Beyond that I can't get, who edited it, and so on.

Q Is there any possibility of that book being a reprint of what Nizer had to say about the case?

A No, because there were short chapters. There must have been fifteen or twenty cases. It is a different book. I don't object to your having it to refresh me.

Q Let me read from pages 19-20 of this book. This is a description by Mr. Nizer of the main column by Pegler about Reynolds which led to the lawsuit, and I want to see

to what extent this refreshes your recollection as to what you had read about this lawsuit.

"On a Tuesday morning there burst across the nation in 136 newspapers with a circulation of twelve million, a full-length Westbrook Pegler column attacking Quentin Reynolds with unprecedent virulence. It seared Reynolds in every aspect of his professional and private life. It constituted not one, but at least fifteen separate and different libels. With resourceful invective it described Reynolds as having a 'mangy hide' which was 'peeled' and 'nailed to the barn door with a yellow streak glaring for the world to see.' It asserted that Reynolds had a 'protuberant belly filled with something else than guts.' It charged Reynolds with being 'an absentee war correspondent,' of having posed as an intrepid reporter because he wants 'covered the ghastly Dieppe raid from a battle ship,' a distant vantage point of safety.

"It ridiculed Reynolds as a man who had 'fallen in love with himself as a celebrity,' and 'by forceful opportune promotion, became one of the great individual profiteers of the war.'

"It suggested that he was a slacker who, 'though six feet five, weighing 250, in the prime of life and health,' had attached 'a woman on the home front [Clare Booth Luce]

who had actually seen more fighting than he, and closer up, while high school boys were pushing back the Nazi in the war he had been asking for for the last ten years.'

"It combined slurs of procommunism and war profiteering [a fine brew] by stating that when 'the pressure on his Russian friends' was relieved during the war, he was 'safe in the United States cleaning up...in the movies, in vaudeville, on the radio, and on the lecture circuit.'

"It asserted that Reynolds was discharged as an editor of Collier's Magazine when his 'medicine grew too strong even for' Collier's and after it had 'seen the light and faced about,' thus charging both Collier's and Reynolds with communistic propaganda and even eventual falling out between them.

"It accused Reynolds of having 'cleaned up $2,000 of the ill-gotten loot of the Garsson brothers who, with Congressman May, later were convicted of fraud in war contracts.'

"Having thus raked Reynolds fore and aft in his professional work, called him yellow, denounced his patriotism, made him out to be a war profiteer, and sharer of loot from men convicted of fraud in war contracts, Pegler then launched a venonmous attack on Reynolds' morals, painting him as a filthy, lecherous ogre of indescribable evil.

"He charged that Reynolds was a member of the 'parasitic, licentious lot' which surrounded Heywood Broun; that Reynolds was a member of the nudist group consisting of Broun and 'his friends of both sexes,' in which 'there was no color line and a conspicuous Negro communist of the present day...' had 'seduced a susceptible young white girl at Heywoods Broun's'; that 'Reynolds and his girlfriend of the moment were nuding along the public road' and Broun feared that if the 'Yankee neighbors...saw Reynolds and his wench strolling along together, absolutely raw, they would call the State Police and give him and his place a bad name.'

"The column asserted that 'Connie Broun, Heywood's widow, for whom Reynolds now expresses noble sentiments, reflecting credit on himself, related that, as Reynolds was riding to Heywood's grave with her, he proposed marriage. But she said that some time later, after he had made an artificial reputation as a brave war correspondent in the London Blitz, he snubbed her publicly and barely knew her. That would be credible.'

"After describing Broun as a 'voluptuary,' a 'sneak,' a 'dirty fighter,' a 'fellow traveler,' a hypocrite and unclean, Pegler's column said that 'Reynolds was a coat-holder for Broun and imitated his morals, and is equally frowsy

physical sartorial corpus...that he was sloppy and ran to fat.'

"He called Reynolds a 'fourflusher' and a 'a sorry mediocrity.' The column plumbed every depth, not overlookin a religious slur against Broun who, he said, had 'worshipped at all shrines,' then 'embraced Catholicism and was funeral-ized with eclat by Monsignaur Fulton J. Sheen at St. Patric Cathedral.'"

Does that column refresh your recollection as to what you knew when you wrote "Wild Tongues" about the Pegler attack on Quentin Reynolds?

A Well, I'm hearing that for the first time. But I do remember and would have remembered anyway is that Pegler made an unrestrained series of attacks -- this was referrin to just one column, wasn't it? Yes, he says on a certain date a column appeared.

The thing I remembered was that it was in the newspape column and that Pegler kept at it; that is, the pursuit issue. Then I remembered that Reynolds was a war correspo ent and he in fact had accused him of cowardice. I hadn't heard before this morals business, or if I did read it it got shoved under the rug or something. I don't recall tha

Q Now, what was your intention in comparing Buckle to Westbrook Pegler in your book?

A Well, I was comparing a situation rather than two people. My intention was not as intentional as I think this emphasis makes it seem. When I was writing I thought there ought to be some ways that people could make public appeal for public justifications or something, take him to court, as I said; and when I thought of that I thought of this goading business of just hounding certain people.

Martin Luther King, Jr., was a person particularly on my mind, but then I thought of other names and people that I was aware of that he had or was aware he was after.

The Kennedy brothers, for example. He never lost a chance to print something that was contemptuous of them.

Q Did you regard Pegler as having slandered Quentin Reynolds?

A Well, in the way I was using the word or had intended to before it was changed, I mean I could have just as well said that he did him gross injustice or grossly misrepresented or savagely attacked.

The question is what kind of word, what form of word you use that comes to you at the moment. Once in a while I use Roget's Thesaurus to try to find out --

THE COURT: Dr. Littell, you said in "Wild Tongues," you used this phrase: "Like Westbrook Pegler, who lied day after day in his column."

You emphasize the fact that you were thinking of the persistent attacks of Pegler on Reynolds, but what I would like to find out, I would like you to search your memory as to what you were referring to when you said "lie"?

Let's take that word. What lies did you have in mind that had been told by Pegler about Reynolds?

THE WITNESS: I don't know that I even thought of that dimension of it. I knew he had been, yes, lying about him or misrepresenting him or something and that he had been taken to count for it.

THE COURT: Now, can you recall anything specific that you knew about the nature of the lies you were referri to?

THE WITNESS: The only thing I remember for sure, as a memory that I have had for a long time, was accusing him of cowardice.

When you read that political thing about he accused him of being a fellow traveler like Heywood Broun, or something like that, I don't even remember that I remembered that, although I may have at the time. But it wasn't the political thing. I mean it is more accidental than we are treating it, you see.

The thing got in there and it might not have if I hadn't just read that paperback, simply because it seemed

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to me that Buckley, as I use the word, lies about, grossly misrepresents and pursues relentlessly some people who ought to have public recourse.

THE COURT: Now, maybe this is drawing too fine a line and I think maybe this is repeating and it won't get anywhere, but I'm going to ask this question again and my intention is to try to find out this: We have on the record the nature of the comments that Mr. Buckley made about Martin Luther King, Dorothy Day, Muste, and so forth.

THE WITNESS: A few examples.

THE COURT: Examples, okay. Then I can draw a conclusion as to the nature of those comments. I certainly have your testimony as to what you thought of them.

Now, what is still a little mysterious to me is the Pegler reference, and I don't mean to belabor it too much but I don't know what you had in mind as to the nature of those lies. That is what I would like to probe and ask you to use your best memory.

Was there anything in particular you had in mind about the type of lies, or didn't you have anything in mind?

THE WITNESS: That's what I'm trying to remember.

THE COURT: That Pegler said about Reynolds?

THE WITNESS: Oh, no. I certainly wasn't referring to my own experience. When I said that he had been caught

out in misquotations --

THE COURT: Excuse me, I'm trying to get to the Pegler reference.

THE WITNESS: I know, I know, but I'm trying to say when I say he relentlessly pursued, it didn't include me. I was thinking of people like King and like the Kennedy and like others that he just kept at all the time. I wasn't thinking of any content. I wasn't thinking that he had called somebody a coward day after day or something like ths

THE COURT: You are still talking about Buckley?

THE WITNESS: Yes. Now we are back where we belong, namely to that sentence. I did not mean that Mr. Buckley day after day misrepresented or lied about some thing that he was a coward. It wasn't the content in that sense that was on my mind.

THE COURT: It was the --

THE WITNESS: Incessant riding and goading.

THE COURT: Riding, R-I-D-I-N-G?

THE WITNESS: Yes, and goading people to the poi where Reynolds would be an illustration. He finally blew and brought suit and it was a Pyrrhic victory.

THE COURT: As far as Buckley, let me get this straight. You did not believe that Buckley was leveling against these people personal remarks or attacks about ti

sexual habits, their morals, their business ethics, their cowardice, anything like that, did you?

THE WITNESS: I don't know of any case where he has done such a thing.

THE COURT: You did not mean to say that in this book?

THE WITNESS: No.

THE COURT: And you didn't know of any such case, right?

THE WITNESS: Right.

THE COURT: Now, the problem that comes to me is that that was the nature, as far as I understand it from the judicial decisions, and it is common knowledge that the nature of the libel committed by Pegler against Reynolds was the kind of thing that I just mentioned, the personal attack on the cowardice, his sexual habits, his relations with widows of friends and that kind of thing, of a very derogatory nature.

Now, did you know at the time you wrote this book that that was the nature of what Pegler had done to Reynolds?

THE WITNESS: I didn't know about these personal things.

THE COURT: You didn't know the nature of the lies told by Pegler about Reynolds, are you telling me that?

THE WITNESS: Of what I knew, I said he had accus
him as a war correspondent of cowardice and other things;
that during the war he didn't carry his weight or something
like that. I don't even remember this other stuff. I may
have read it and I may have suppressed it, I don't know, bu
that wasn't what I was talking about. I don't remember tha
kind of stuff anyway generally.

THE COURT: Can you answer me this: Why would yo
use the phrase "lied day after day" if you did not know the
nature of the lies that you were talking about? I don't
fully understand that.

THE WITNESS: Because of the goading.

THE COURT: You weren't really talking about lie
so much as goading and repetition of attacks; is that righ

THE WITNESS: Yesterday Mr. Mahoney asked me if
I remembered at a certain point any other cases where
Mr. Buckley had lied about Martin Luther King, Jr. I didn

Later when we were talking about riding issues,
then I remembered. It pushed a button. I think he -- and
this is what was in my mind, that there are certain people
that Mr. Buckley -- I didn't read that much of him, but
every time I did, or it was called to my attention, I ran
against something that had to do with the Kennedy brother
or something that had to do with Martin Luther King, Jr.

something like that, which makes me feel or made me feel at the time that he had an obsession about certain people.

The question is when does a gross misrepresentation become a lie? Sometimes I think you should only say lie when you are dealing with facts; that is, that somebody says it deliberately misrepresents facts.

Sometimes I think, and that is what I was thinking when I wrote this obviously, that if you grossly and deliberately misrepresent somebody, like accuse Martin Luther King of being a doctor of lawbreaking and being an anarchist and a disciple of violence, and so forth, well that's a lie. It is a certain theoretical level lie instead of a really precise detailed lie.

The question is at what point does gross misrepresentation become a lie?

When I said this I was not meaning -- of course, the problem is if a person feels something very keenly, and I think is somewhat tainted ideologically, he may grossly misrepresent, "lie" without even realizing that he is doing it, and the way that if I say today is Tuesday, I know I'm lying.

THE COURT: Let me get this. You believed that Mr. Buckley had misrepresented the views and position of people like Dorothy Day, Muste, and King; right?

THE WITNESS: Yes.

THE COURT: In calling them anarchists, doctors of lawbreaking, that kind of thing. The characterizations you thought were invidious and misrepresentations?

THE WITNESS: Anarchists of violence.

THE COURT: You did not know the nature of lies you were referring to committed by Pegler against Reynolds except this question of cowardice; is that right?

THE WITNESS: That's right.

THE COURT: Your main intention was not to call attention to Pegler's lies about Reynolds about the type of persistent attacking?

THE WITNESS: Yes, that's right.

THE COURT: All right.

THE WITNESS: The goading.

THE COURT: I think that's about all we can do with it.

You go ahead, but I think we have had his position on this repeated several times.

Q You did intend to say that in the sense of misrepresenting their positions Buckley lied about these peopl is that correct?

A Yes, that's what I was saying. I mean that was the analogy. I didn't mean it literally, that like Pegler Buck

lied day after day. But in the back of my mind certainly it must have been the sense of gross misrepresentation, deliberate and unjust.

Q Now, do you remember the approximate length of this pocket book description of the Pegler case?

A It was a normal size pocket book and there were eighteen or twenty cases, which would work out to be what, twenty-five, twenty pages to a case, eighteen?

Q Do you remember, aside from how much you now recall of that, do you remember whether that article about the Pegler and Reynolds case set forth the substance of the article, the one I've just gone over from the Hizer book on which the suit was originally based?

A I didn't hear you on that.

Q Do you remember whether the pocket book that you read about the Pegler-Reynolds case set forth in that twenty-five page treatment the substance of the article by Pegler about Reynolds that led to the lawsuit?

A I don't remember. It must have; that is, it must have said something about -- was it a single article or was it a series? The thing I remember, and this is what I must have gotten out of the article since it is the only thing I have read on the subject, that there were a whole series of articles day after day after day. He wouldn't let him

go, wouldn't let him have peace.

THE COURT: Is it your understanding it was a single article or several articles?

MR. MAHONEY: It was a single article, your Honor. Everything that I've quoted here --

THE COURT: Mr. Blasband, you referred us to the Court decisions on it.

MR. MAHONEY: Apparently the answer in the lawsuit was taken as indicating motive. They came up with a quite fantastic answer in the lawsuit. That is the second most important source -- of course the answer of a lawsuit would be privileged, but it was taken as showing motive.

THE COURT: I don't want to talk about that.

MR. BLASBAND: I don't remember, Judge, if there was more than one article or not. Frankly, I don't know much about that whole incident.

THE WITNESS: I believe rightly or wrongly there were a series.

THE COURT: Just to simplify it, you believe that the book you read described the substance of Pegler's artic or articles, whether it was singular or plural?

THE WITNESS: It must have because it was sort of a great law cases type of book.

MR. MAHONEY: Mr. Callahan called to my attention

that the answer is rather provocative, to say the least. The answer of the lawsuit Pegler printed portions of in the column. Presumably there was something in their relationship that led up to this.

THE COURT: All right.

Q Dr. Littell, the other change, besides substituting rumor for slander, the other change that was at Mr. Klagsbrun's instance was to adopt the words repeatedly and deliberately and the phrase repeatedly "caught out for deliberate misquotations."

Now, can you recall the discussion that you had with Mr. Klagsbrun on this question of taking these words out, what you said, what he said should come out and what your remarks were and what you had to say on that subject?

A I have only the last part. Which one is it?

Q In other words, Mr. Klagsbrun wanted, and ultimately it went this way, wanted "Repeatedly and deliberately" taken out. Now, when he made this proposal, first he asked for documentation as it originally stood. That was the result of the first meeting. Then at the second meeting he made this proposal that these words be taken out.

Now, can you recall the conversation you had with him, what position he took and what position you took on that subject?

A On "repeatedly and deliberately"?

Q Yes.

A Well, I can think of a sensible reason but I'm not sure I'm remembering something real or remembering something that makes sense.

MR. BLASBAND: Your Honor, I think if the witness cannot remember the conversation he shouldn't be required to speculate.

THE COURT: Give us your best memory.

THE WITNESS: I think I would be speculating if I expatiated on it.

THE COURT: All right.

Q Why did you put the words "repeatedly and deliberately" in the original text?

A Because I thought at the time that's what was going on.

Q With respect to whom, repeated and deliberate misquotations with respect to whom? What instances did you have in mind?

A This is the sentence before the one we were talking about.

Q Yes, I know that. It is the sentence before.

A But it isn't "deliberately." It is "repeatedly caught out for deliberate misquotations."

Q Exactly.

A This was --

Q What was that based on?

A Well, that was based on different items, part of which we have referred to, and other cases. I think we have referred to most of them that I could dig up and remember as being fresh, reasonably fresh at the time.

Q Well, aside from the two instances involving you, and we have been all over those, the National Review Bulletin of August '67, Who Are The Totalitarians that contain misquotations? Do you know of any other instance in which Mr. Buckley has misquoted someone in quotation marks as you put it?

A No. With quotation marks was because I remembered the checking out of what had happened on IAD, and so on. But the misquotations is a charge which we have mentioned before and goes back to God, Man At Yale, or every month since then somebody has howled.

Q You were aware that people were howling every other month about Buckley misquoting them?

A No. I say it would be reasonable to suppose. That is, it is part of the general aura or miasma.

Q Part of the general aura of what?

A Of Mr. Buckley's reputation in the circles that

I travel.

Q And was it on that at you based the phrases "repeatedly and deliberately"?

A Well, those are personal phrases and they imply intention, and our better judgment must have been that that is not something that I know, that I can read inside his head; that I had better say what I think objectively and in effect not impute motives.

Q In its final form reading, "Buckley has been caugh out for misquotations and for repeating radical right malice and rumor, but he never admits a mistake or apologizes to the victims." What did you think the words "caught out" or what did you intend the words "caught out" to mean?

A That is just like somebody has been cited as an example of something or other.

Q Dr. --

A Excuse me. Or I might have been thinking of some people, including myself, who had seen what he had written and shown that it was false.

I think Bundy in his review -- McGeorge Bundy in his review of God, Man At Yale, or his review article about it, had some of that stuff.

Q Doctor, I think you have testified American Mercu is an anti-semitic magazine?

A Yes.

Q You regard the John Birch Society as a fascist organization?

A Yes.

Q I refer you, Doctor, to your special trial memoranda that the parties recently submitted, were you submitted one dated May 20, 1974, to Judge Griesa and I want to read the last paragraph numbered 8.

"One additional point. Much has been made of Mr. Buckley's break with American Mercury, the John Birch Society, and so forth. I have been in too many battles in the Youth Student Union, Civil Liberties organizations and also working for the American Government overseas to take such protestations at face value. The proof comes with open repentance, an act of commitment to truth and fair play.

Do I understand you to be unpersuaded by Mr. Buckley's professed break with American Mercury and the John Birch Society?

A Today or then?

Q Let's start now, your writing as of May 20, 1974.

A Let me read what it is that you say I today believe

Q What you today wrote.

A This is referring to what I thought at the time when I wrote this. I was not utterly persuaded that

Mr. Buckley's quarrel, which was primarily a criticism of Robert Welsh, indicated a complete break from the John Birch Society. In the same as Rustin, when he ceased being a young communist, publicly professed his regrets and his change.

You know, there are other illustrations of this. And I was not convinced at that time that -- well, you asked and I would say probably ninety-eight percent, or something like that, but I'm not absolutely convinced that it wasn't an overt facade.

But when I wrote I decided, well, I would write within the limits. I'm not going to say I doubt it. and so forth, and so on.

Q And you had similar reservations about Mr. Buckley disassociation from American Mercury?

A Yes. Less I would think. I think he learned his lesson there rather quickly.

Q You didn't express these qualifications, this ninety percent or less in what you stated here, did you?

MR. BLASBAND: Your Honor, I'm wondering about the propriety, your Honor, of referring to a brief. It is not an affidavit.

THE COURT: I don't think it makes a lot of difference. It isn't subject to the libel suit, but I'll allow

the question.

A I don't understand. You are trying to get me to say what today I think is the case? This was written to explain -- you can see very clearly it must lead one to the conclusion that he then functioned in this way. "Much has been made; I have been in too many." I'm talking about what I in 1968 and early '69 thought to be the case.

You ask me what I think today about Mr. Buckley, and I'll have to stop and think and I certainly would use different language starting fresh.

THE COURT: We are concerned with what he thought back at the time he wrote the book.

Anything else?

MR. MAHONEY: Nothing further.

THE COURT: We will take a short break and resume.

[Recess]

CROSS-EXAMINATION

BY MR. BLASBAND:

Q Dr. Littell, when and where were you born?

A I was born in Syracuse, New York, June 20, 1917.

Q Now, where did you go to school? This is through high school. Can you give us a chronology?

A I had two years of elementary at Meadeville, Pennsylvania, and I went through -- I never finished high

school. I entered college from the middle of high school at Mt. Vernon, Iowa.

Q Mt. Vernon, Iowa?

A Yes.

Q Where were you in high school?

A I went to the Mt. Vernon, Iowa, High School.

Q Where did you go to college and how old were you?

A I went to Cornell College at Mt. Vernon, Iowa.

Q How old were you when you entered Mt. Vernon college or Cornell College, excuse me?

A I was sixteen.

Q What kind of school is Cornell College?

A It is a Christian college, Methodist denomination.

Q Now, you are a minister, are you not?

A Oh, yes.

Q When were you ordained as a minister?

A We have different stages. I was licensed in 1933 and had my final ordination, the second, in 1941.

Q Well, you were licensed in 1933. That would make you fifteen or sixteen years old; is that correct?

A I was fifteen.

Q Did you study to become licensed at that age?

A Yes.

Q Where?

A There were district courses in the Church --

THE COURT: You were licensed in what year?

THE WITNESS: Spring of 1933.

THE COURT: You were born in 1917?

THE WITNESS: Yes.

THE COURT: So that you were what?

THE WITNESS: I was fifteen years old.

THE COURT: What did you study for that?

THE WITNESS: The annual conference, which is the lower judicatory of the Methodist -- it was then the Methodist-Episcopal Church. It had forty-two unifications with other bodies. It has a series of courses which are taught by ministers in conference. And to be licensed you normally take one of these course, which is simply -- it is like the old study that lawyers used to make with an older and more experienced lawyer. What do you call it? Like a apprenticeship. Then you cannot be ordained in the denomination until you have a college education. So that I was functioning and actually preaching, but I couldn't get my ordination until I had the required education.

Q What type of functioning were you doing as far as ministerial duties before you were ordained?

A Well, I preached and I was an officer in the Methodist Youth Organization, Epworth League. And in college

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I was chairman of the gospel teams.

Q The gospel teams?

A Yes.

Q What is that?

A Well, that's what we called the teams that we sent out every week, usually three or four people, one musician, either instrumental or vocal, one preacher, and one to conduct the service. Sometimes if we had luck the four of them would make a quartet for some special program in the services. We ran them all over Iowa and eastern Illinois -- western Illinois.

Q Where did you preach at that time?

A I preached in dozens of pulpits, mostly in Iowa. I didn't have a church of my own while I was in college. Some of the fellows did, but I was chairman of the teams and I preached in many, many pulpits in mostly Iowa and Illinois.

Q Well, let's go through college. What did you study in college?

A I majored in history and political science.

Q And when did you graduate?

A I graduated in 1937.

Q That is from Cornell?

A Right.

Q Could you give us a narrative of your activities following your graduation from college? What did you do after your college graduation?

A I went to the Seminary.

Q Where was that?

A I went to Union Theological Seminary.

Q Where is that located?

A Broadway and 120th Street, New York City.

Q And how long were you at the Seminary?

A I was at the Seminary for three years and received the Bachelor of Divinity degree in the spring of 1940.

Q Were you working during the time that you were at the Seminary?

A Yes. I was in charge -- well, I had several jobs that are unimportant. But I had a church for one year in Myrtle Beach, part of Milford, Connecticut. One year I was youth secretary of the Methodist Board of Missions.

Q Now, you were at the point where you have gotten your degree from the Seminary, and what did you do following or after obtaining that degree?

A Well, I think --

Q Excuse me, I'm sorry to interrupt. Did you receive any honors in any of your scholastic activities?

A Yes, I received a number of honors in college

and in the Seminary.

Q Tell us what they are.

A Junior election to Phi Beta Kappa I suppose was the most important one in college. Also I won my letter, I should say, in wrestling and cross-country.

Q But no letter for those teams you were talking about.

Well, could you tell us what the other honors were that you received, if any?

A I received scholarships and I received -- my partner and I were named the ranking debate team for three years in college.

If I took plenty of time I could probably think of a string of things because I tried to be as active as possible and tried to study as hard as possible.

But there is a parallel line which is important, I think, for our experience here; namely, by the time I was a junior in college I was a national officer in the Methodist Youth Organization, and as such became active, when I moved to New York to go to Seminary, as a member of the executive committee of the American Youth Congress, a member of the executive committee of the World Youth Congress, and at one time as a matter of fact I was national chairman or executive committee member of seven different youth

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organizations.

This was my first encounter with totalitarian groups. I became chairman of the Anticommunist Caucus in the World Youth Congress, American Youth Congress, and the United Student Peace Committee, and learned something I've never forgotten; namely, that the united front, either the opening to the left or no enemies on the right, approach is basically unsound. You spent all your time finally fighting for your organization rather than being able to do the purpose for which you think the organization is there. Because those who are under totalitarian discipline are not there for the purposes stated. They are there for power, and the question is basically who, before you spend very much time at it.

So that my feelings and experiences in this -- I was representative of the Methodist Youth and allied with a representative of the Quaker Youth, what was then the denominational youth, because I worked with them day after day here in New York in this organizational tussle. They are still friends of mine.

So that there was a parallel -- what I'm saying is there was a parallel thing there. What I was doing as a Methodist Church person, young person, and what I was doing as I went to school.

Q Let's go then up to the point when you have gotten your degree from the Seminary.

THE COURT: What year was that that you got your Bachelor of Divinity?

THE WITNESS: 1940.

THE COURT: 1940.

Q What did you do then?

A I was invited to become minister of youth at the Central Methodist Church in Detroit, which I did.

My wife became -- my wife also served several years as a Methodist minister and she was at that time director of Methodist youth work for the State of Michigan, while I was director of youth work in the big church in Grand Circus Park.

Q When were you married, Dr. Littell?

A We were married, tomorrow will be thirty-five years; June 15, 1939.

Q And your wife is still alive?

A She's waiting for me.

Q Do you have any children?

A Yes, we have four, and four grandchildren.

Q How old are your children?

A Our first child, a daughter, was born in 1941; our second child, a daughter, was born in 1943; our third

child, also a daughter, was born in 1945; our fourth child, a son, was born in 1950.

Q Are your daughters married?

A The older two are married.

Q What does your youngest daughter do?

A She is head of a program at St. Mary's Church in Madison, Wisconsin, working with families of terminally ill children. She travels all through the state working with the parents and the siblings on the theology of death and the meaning of death and helping them to adjust to this experience.

Q How old is your son?

MR. MAHONEY: Objection, your Honor. I wonder if all of this is relevant.

THE COURT: Well, it is good background.

Q How old is your son, Dr. Littell?

A He would be twenty-three.

Q What does he do?

A Pardon me?

Q What does he do?

A He has just finished a year working in a Christian village in Israel.

Q Doing what?

A He was just doing physical labor, working in the

orchards and in the fields as a volunteer.

Q Did he just finish school?

A He graduated from college a year ago and he felt -- he majored in English literature and he didn't want to go on for the graduate degree right now, and he is sort of trying to decide what he wants to do.

Q Let's go back to your work. We had you in Detroit. How long were you in Detroit?

A I was in Detroit until the fall of 1942.

Q And then what did you do?

A I went back to graduate school at Yale.

Q And what did you study at Yale?

A I studied church history, which had been my major also at Union Seminary.

Q Did you obtain a degree at Yale?

A Yes. I took the Ph.D. there.

Q And how long were you at Yale?

A I was at Yale physically two years and then receiv degree in absentia in 1946.

Q Was that your Ph.D.?

A Right.

Q And do you have a Ph.D. in history?

A Church history.

Q Did you work at all while you were attending Yale

A Yes. but I had a scholarship so that I was able to spend a great deal of time in intensive study. I did odd jobs. The real problem, and it has also to do with our discussions of various ideological discussions here, the real problem is that I was raised a pacifist. My father was a pacifist in the First World War. It wasn't until the United States was at war that it became clear to me that we had an excellent doctrine of heaven, so to speak, but a very poor doctrine of this world.

But by that time many of my closest friends were in civilian public service as conscientious objectors and I didn't feel that I could overnight become something else from the person that I had followed in this teaching.

I did publish an article repudiating the absolute pacifist position, but I went back to Yale to regain my soul, as it were, because I realized that I was wrong at a very important point. It was a most serious spiritual crisis in my life because it meant not only that I had to rethink beliefs that had been a basic part of my existence for years but also that I had to understand that on one important point my father was wrong.

Q What type of work did you do while you were studying at Yale?

A Pardon?

Q What type of work did you do while you were studying at Yale?

A I worked as a night watchman in a plant which allowed me to do some studying and also to attend school the daytime. I had a wife and two children.

Q I see. What did you do after Yale?

A Beg your pardon?

Q What did you do after you received your Ph.D. from Yale?

A Well, I was hired by the University of Michigan as director of their interfaith work, before I received the Ph.D. I was there for a year and a half and finished my dissertation and received the degree in absentia in Ann Arbo That was the second post in the United States, of which there are now nearly two hundred, where the University maintains a staff person whose assignment it is to encourage at every opportunity Catholic, Protestants and Jewish cooperation. This threw me head over heels with the interfaith work where I've been ever since.

Q Let's continue with your work activities from Michigan on then.

A In 1949, spring of 1949 I went to Germany, having been hired as a DAC by the Department of the Army.

Q What is a DAC?

A Department of Army Civilian, as a technical expert in German church and university history. I started as an officer there in military government.

Then in October of 1949 we went over to the High Commission and I became the chief Protestant advisor to the High Commissioner, Mr. McCloy.

Q What was your function as chief Protestant advisor to the Commissioner?

A We were mopping up on some delazification. I was hired in 1947 but I had already -- I imagine everybody in this room knows pretty well how the Army works sometimes. So that I for two years running had signed contracts with the University of Michigan and then the appointment came through. So I didn't get there until '49.

But we were mopping up on deNazification and when I arrived the airlift was on and there was a distinct change of political emphasis from practically straight line delazification, trying to keep former Nazis out of key positions, universities and churchses, to an emphasis on democratization and mutualities between the United States and West Germany, exchange programs and the financing of textbooks and conferences and seminars, and so forth, to encourage the growing friendship between the United States and West Germany

Q What was your role in this program?

A Oh, I was in charge of considerable staff and what now seems like a very large budget indeed.

Sometimes we were given special problems; that is, you had to go and look into a certain church agency or office or school or center where we hoped that somebody would come into prominence because he was friendly to American or democratic ideals, or where we were worried because somebody who had been, say, a third level Nazi was becoming too influential, and so forth.

THE COURT: When did you become the Protestant advisor to Mr. McCloy?

THE WITNESS: In 19 -- must have been the spring of 1950.

THE COURT: How long did you have that post?

THE WITNESS: Until December of 1951.

Q Now, I want you to, if you would, Dr. Littell, restrict your answers to these questions just to the time that you were serving with the High Commission and no furth

Could you give us a little more specifics about exact what you were doing yourself, what kind of problems you wer trying to overcome, for example? How did you function in this whole setup?

A We had staff in all the key cities in the America zone, both American and indigenous. So part of the work w

to -- also I should say there was a Catholic advisor, my colleague, and there was a Jewish colleague who was second to Usareur in Heidelberg but worked with us when we needed somebody of his capacities.

We would have monthly staff meetings. We would set out certain positions of American policy, or they were set for us, and we would discuss how these could be interpreted and made significant to the German people.

There was a growing emphasis on anticommunist work because the wartime alliance had broken up and we were entering what is called sometimes loosely the Cold War period. We were drawn increasingly into what we could do for the churchmen in the East Zone of Germany who were under the hammer or growing pressure from the communist government there.

My role in this was a chairman of a staff. Sometimes I would make speeches at some conference or university. We had a very large exchange program. We sent many Germans to the United States from the churches and universities, and we brought some experts from the United States to help us with special programs, like getting church journals started again, church magazines, helping seminaries to include ecumenics in their curricular, interfaith understanding, whereas previously Germany had an awful lot of bigotry and

intolerance, particularly toward the Jews, also much antipathy towards Catholics and Protestants.

Q Was part of your study to study communism and/or Naziism during this period?

A Yes. We financed many pamphlets and books interpreting what had happened to Germany in the Third Reich. We didn't write them but what we did was find German survivors who had been reasonably decent people who were back now in public life, but we published hundreds of thousands of books in total, and probably under my administration we would have published in those months thirty-five or forty titles.

Q And you studied these works?

A I worked with the authors, sometimes in conferences and seminars where we would get together experts as to what the church struggle had meant and how the Nazis had subverted the churches and the leadership in many situations and how they captured others and how they wiped out practically European Jewry. How do you get at these problems? How do you educate against anti-semitism? How do you get churchmen to come over and understand that liberty and self-government the basic democratic values, are not just political issues but they have something to do with how you look at human beings religiously.

We financed dozens of conferences in the church insti-

tutes, the Soziale Instituta and the Evangelische Akademie of the Protestants, in which we brought together survivors, church people, brought together Christians and Jews. We set up councils of Christians and Jews with the help of staff people from the National Conference of Christians and Jews in this country, and they still exist. That's one of the real worthwhile things that lasted, so to speak.

Q During this period were you studying communism as well?

A Yes, because I have a long standing conviction and one that has drawn me into arguments over the years with many friends as well as professional people that basically totalitarianism is a rubric under which communism and fascism and Nazism need to be treated.

There is a big debate about that yet, whether you can treat communism as an ideology in the same way that you treat fascism as an ideology.

I maintain that you can't. If you experience it, it feels very much the same. Whether you are in an organization fighting for the life of the organization or whether you are in a country under a totalitarian regime.

Then we were at that time able to get people out of East Germany to the West. That was before the wall was built you see. Therefore, we brought over young seminarians,

pastors, we brought women from the church women's organizations and we brought lay leaders of course, we brought theology professors to conferences in major centers in the West to discuss their problem.

Because in East Germany these people lived from 1933 clear through the present day under totalitarianism. They didn't get any fresh air in 1945. They were still there, and we were discussing how do you keep alive in that kind of a situation?

Of course, it would be diversionary but I published many, many articles and at least two books growing out of this experience on the church struggle in Germany after 1945 with totalitarianism.

Q We will get to your writings a little later.

MR. BLASBAND: At this point I would ask that you mark the record for possible sealing.

THE COURT: The further parts of the record will be under seal that we are talking about now.

[Continued on next page]

Q What did you do when you came back to this country?

A I was invited to come to Candler School of Theology at Emory University in Atlanta. I was there for two years.

Then I was invited to come to Perkins School of Theology at SMU which is the most exciting of our Methodist schools, I think, in Dallas.

Q What did you do at Emory?

A I was professor of church history and I set up in this connection the most important thing that I have set up, in cooperation with a colleague in political science, who is the editor of the Journal of Politics, a graduate seminar and study of totalitarianism. I have taught that seminar either with colleagues or myself every year since then.

Q Now, after Emory where did you go?

A I went for two years to SMU.

Q What was your position there?

A I was professor of church history, same as Emory, although I had a double appointment. I was also a professor of history at Emory.

Q What subjects did you teach at SMU?

A I taught church history, history of the Christian Church, an introductory course; then courses in my specialties, which are American church history, reformation, history of lay movements, and church struggle.

One thing I might have mentioned earlier, I worked in Germany in my public life very actively with the lay institutes, the Evangelische Akademie so-called. I was a co-founder of the European Association in 1955 and I found the Ecumenical Department of the Kirschentag, which is the largest layman's movement in the world.

This led me into more and more active work, lay training I wrote these articles on prayer groups, to which reference was made. And in my practical work in the church after I came home as well as in my teaching, the church struggle and the lay training became the major emphases.

I was invited to travel, and I have been traveling ever since, lecturing in the churches and our institutions on these two issues more than anything else.

Q How long did you stay at SMU?

A Two years.

Q Where did you go after that?

A I went to Chicago Theological. ✓

Q What did you do there?

A He offered me a secretary and a graduate assistant That was too much to resist. There I taught for eight years much the same sort of thing as before.

Q Were you a professor?

A Oh, yes.

Q Give us the years that you were at Chicago.

A I was at Chicago from 1962 to 1966 as professor, and as adjunct professor 1966 to 1969. In those years, '66-'69, I was also president of Iowa Wesleyan College. I taught a day and a half a week and commuted from Iowa.

Q How large an institution is Iowa Wesleyan?

A Iowa Wesleyan, in the third year that I was there, went over 1,000 students. The academic staff was 59 or 60. I'm not sure how much other administrative and maintenance personnel we had.

Q What kind of a college was it?

A It was and is a Methodist school. It is one of the colleges under my home conference. You see, every clergyman in the Methodist Church has to belong to a judicatory group, and my home conference is the Iowa Annual Conference, since I was licensed years ago.

They asked me to take the presidency of that college and to reorganize it, which I did.

Q Were you asked to leave Iowa Wesleyan?

A No. They announced I was under appointment for life just two weeks before I discovered that my mother was dying of cancer here in the East and I had to tell the chairman she was alone, a widow, and I was the only one accessible.

My brother is in diplomatic service overseas. I might have mentioned that.

Q What did you do after you left Iowa Wesleyan?

A Well, the best job which was available to me under those circumstances and the nearest to the hospital was Temple University in Philadelphia, and I have been there in the Department of Religion since '69.

Q Are you a professor?

A Oh, yes.

Q What do you teach there?

A I teach a graduate seminar on the church struggle with totalitarianism and graduate seminars on other subjects. Once in a while I teach an undergraduate course.

I'm in charge of the offering in the University in the American religious history field which is taught by quite a number of people each semester.

I was for two or three years director of graduate religious studies. We have the largest Department of Religi than any state university in the country. About 200 Ph.D. candidates, of whom fourteen or fifteen are mine presently and all of whom were under my supervision for some time.

Q Other than "Wild Tongues" have you had any writin published, books, papers?

A I've got two that are coming out this fall, but

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that are actually in print right now I have twelve other books.

Q Twelve other books. On what subjects?

A Not counting now reissuing, and so forth, but different titles. I have about 250 articles of a specialized nature.

Q Tell us the nature of the books that you have written, the twelve books that you have just referred to.

A Well, my basic interest since I started writing papers in college has been on religious liberty, struggles between church and state, right relations between church and state, wrong relations, what happens when it goes bad, and in the Soviet Union or Third Reich or someplace else what happens when soul liberty, which it was called when it was honored what kind of Christians you get, speaking as a Christian as far as religious liberty is concerned.

Therefore, my first book, the thing which I worked out was in the origins of religious liberty. It was called "Anabaptist View Of The Church," and has been translated into German. I think that is the only foreign language it has appeared in. It was a study of the origins of religious liberty.

I have written "From State Church To Pluralism," which is a story of the development of the religious liberty

in America. That is in the second edition.

I have written some specialized monographs that nobody but scholars would be interested in. I wrote a book called "The Free Church In 1957," which also is published in Germany with a German title. One chapter of which discusses the struggle of the church to maintain its integrity under totalitarian regimes and ideologies.

I have written one book on the history or development of lay movements -- no, two books. One called "The German Phoenix," which was a discussion of the emergence of lay movements in postwar Germany; one called "The Church And The Political Order," which was a discussion of one way in which the churches should function with trained laity to support the democratic way of life, if you will.

There is one section there about the problems of extremism, and so on. That was published within a few months, maybe within two months of "Wild Tongues."

"Wild Tongues" is the only book that I have published which I conceived and have thought of as a political tract, a tract for the times rather than something that was distinctly scholarly or churchly.

Q Could you tell us what publishers have published your works other than MacMillan?

A Let's see, Beacon Press, Seaberg Press, Christian

Verlag published two of my German books. I forgot the biggest book that I have been involved in at all, which was a handbook of the ecumenical movement. I won't give you the German title, but it was published by Kreuz Verlag, in 1960.

THE COURT: Wasn't Mr. Alexander Anderson connected with another publisher?

THE WITNESS: Yes, Doubleday & Company. I think two of them there.

That's all I can think of right now.

Q Is there anything else you wish to add about your professional career that I haven't asked you about?

A I should add two things. One of them is not irrelevant. We are having an international conference in Philadelphia, bicentennial conference in 1976 on religious liberty, and I am program chairman of that event. We will have there, if all goes well -- we already have negotiations under way -- the Bishop of Basques from Spain, who has been standing up so courageously for his people. We are trying very hard to get Solzhenitsyn to tell the story of the struggle for soul liberty under communism.

That is the sort of thing which we will be doing, along with papers and discussions to celebrate the Virginia Bill of Religious Freedom and the First Amendment in this country.

In terms of what specifically is related to what we are doing now, in 1964 I became and was for eight years a member of the board of Christian Social Concerns of my denomination, and the bishops asked me to became -- to set up and become chairman and set up a committee on the problems of extremism, because by 1964 they were beginning to be worried about the extent of published attacks on the church.

I did that for several years and that led to my being asked to be the chairman of American Democracy, because I spoke all over the country in connection with this church struggle problem. It is what led to my being asked to be consultant to the Women's Society of Christian Service at my church. When they decided to have a two year study project on the problems of extremism, the attacks on their work at the local level and at the national level.

Q Let's talk about the IAD for a minute. Could you tell us briefly what the purpose and function of the IAD is?

A Well, we have some papers in the file that are what we say exhibits -- is that it?

Q In the record.

A In the record which would fill it out. But in essence it was founded to deal with problems of extremism and to inform as many American citizens as we could of the threat which was posed by disciplined cadres of the left

and their fellow travelers and disciplined cadres of the right and their fellow travelers to the middle ground.

The basic premise which I stamped on it from the beginning when we announced it and when we set up the national board and I wrote the letters, and most of the people who went on the national board are personal acquaintances, some of them close friends of mine, was that liberals and conservatives have more in common with each other than either one of them has with the extreme position.

Q Do you have people connected with the IAD that would publicly identify themselves as conservatives?

A Yes.

Q And do you have people connected --

A We had a Republican national committeeman on the board in the beginning, a very close friend of mine.

Q Can you give us some examples of conservatives that are connected with the IAD?

A Well --

THE COURT: That New York Times announcement, isn't that in evidence? If it isn't I think it ought to be.

MR. BLACKMAN: I think it is in.

THE WITNESS: I put it in, I'm sure I did.

I could go down the line and maybe even Mr. Mahoney and I would agree as to who is a conservative and who is a

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liberal.

THE COURT: Let's see if we have it.

MR. BLASBAND: Were you referring to the New York Times?

THE COURT: I remember seeing a document, a Xerox copy of a New York Times announcement that listed -- the news item that listed a whole lot of people connected with the IAD.

THE WITNESS: Mr. Mahoney, don't you remember that? You were the one who called it to my attention in the file, I'm sure.

MR. MAHONEY: I don't have a specific recollection.

THE WITNESS: There were two front pages of Home Front early on and there was a clipping from the New York Times and then there were two items on the same page, one two-column and one single column from the papers in Houston? remember?

MR. MAHONEY: That is very recent. That would be in the late numbers.

[Pause]

A Among those names here I would consider Jacob Blaustein a conservative, and he has so considered himself while he was alive. Dr. William Haber, Dean Haber of Michigan was a conservative economist. Bishop Kenneth Pope

of my church was one of our most conservative bishops.

I need the letterhead to remind me of the people. I haven't looked at it lately. I have been setting up another organization and I am vague as to who is on the letterhead.

THE COURT: Nobody has apparently offered it.

Q Are there liberals connected with the IAD?

A Yes. Arnold Foster was one of our council members and I am sure he would consider himsalf as a liberal. Everett Palmer, who is a bishop of my church, always called himself a liberal.

May I add something to this? I think one of the important things about nonideological politics is that most of us in the middle ground will be a "liberal" on one issue and a "conservative" on another. In other words, we are not trying to be relentlessly something.

It is a different thing. A communist or any of the various splendors will try to be relentlessly consistent. A fascist or a Nazi will test his practical actions by ideological structures.

I think most Americans in the middle ground are, shall I say, socialists when it comes to the post office and private initiative people when it comes to -- some of us feel very strongly when it comes to educational institutions

or most business enterprises. I never liked personally to be called either a liberal or a conservative in the sense that I'm in a box and don't have any mobility.

I think American style politics is pragmatic politics and that we try to figure out what makes best public policy and we should avoid all these ideological overloads.

Q Referring to this work "Danger On The Right," which is in evidence, tell us, if you will, about the authors, Foster & Epstein.

A Foster & Epstein are the heads of the legal staff of the Anti-Defamation League. I think Epstein is not only a top man over the legal branch but he has some other program portfolios; whereas Foster works primarily with the legal. They are top men in the Anti-Defamation League and have been for years. They are specialists in the encounter of the Jewish religious community or the Jewish community with anti-semitism primarily, but they get led into the study of and collecting materials on other kinds of extremism and other types of extremist organizations.

Q Do you know anything more about their reputation? Are they well regarded?

A They are well regarded where I live; that is, by Christian and Jewish religious leaders and by academics. They are much despised and attacked by the radical right.

MR. BLASBAND: Your Honor, for the purposes of the present I would like to terminate Dr. Littell's examination and following Mr. Mahoney's redirect, Dr. Littell may want to make a motion and I won't argue it, of course. I will just make the motion.

I think it might help the record if the proceeding goes any further and then call Dr. Littell on his own case.

THE COURT: I see. You are considering you are still cross-examining Dr. Littell?

MR. BLASBAND: That's right.

THE COURT: But there would be more testimony on Dr. Littell's own case?

MR. BLASBAND: That's right.

MR. MAHONEY: No redirect, your Honor.

MR. BLASBAND: We make a motion for judgment on behalf of Dr. Littell.

I hope you don't mind my making a motion for you, Dr. Littell?

DR. LITTELL: No.

THE COURT: The motion is denied.

MR. BLASBAND: The defendants call Dr. Littell.

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D R. F R A N K L I N H. L I T T E L L, resumed:

DIRECT EXAMINATION

BY MR. BLASDAND:

Q Dr. Littell, in our special memorandum to the Court we listed a number of items in which it was stated that Mr. Buckley made false statements about certain individuals.

THE COURT: Incidentally, does the plaintiff rest?

MR. MAHONEY: Plaintiff rests, your Honor.

THE COURT: All right, go ahead.

Q I would like to get these items on the record. In other words, if you would, and you may want to use this memorandum to refresh your recollection, could you tell us the respects on which you believe that Mr. Buckley has made false statements about individuals?

THE COURT: It seems to me that we have explored the point almost too much. Believe me, I don't want to cut you off or Dr. Littell off, but it seems to me probably almost an embarrassing number of times we have gone into that subject. I hope you will bear in mind the testimony.

Now, if you want to add to it or if you really feel it needs to be scanned again, you are at perfect libert to do so.

MR. MAHONEY: I do object if what he is really

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trying to do is have Dr. Littell read two pages of their special trial memorandum into the record as his testimony.

THE WITNESS: I didn't hear that.

MR. MAHONEY: It appears he has handed Dr. Littell page 25 of their special trial memorandum and in effect he wants him to read those two pages into the record.

MR. BLASBAND: I don't want that. I gave that to Dr. Littell to refresh his recollection because he went over that material as it was being prepared and I think there may be items ---

THE COURT: If you feel that the record requires going into that, into the specifics, you go ahead, but I'm just saying I think certainly in a general way much of the specifics have been covered. Bear that in mind and you do what you feel you need to do.

MR. BLASBAND: All right, your Honor. I think I will just ask him specific questions and that will take care of it.

THE COURT: That's fine.

Q Did you believe that McGeorge Bundy, at the time you wrote "Wild Tongues" did you believe that McGeorge Bundy was a fascist?

A No, I wouldn't believe that.

Q I'm talking about McGeorge Bundy.

MR. BLASBAND: Your Honor, you can see I'm going down the list. Exhibit Y is the reference

Q Did you believe that A.J. Muste and Stringfield O'Barr were pacifist fellow travelers?

A Certainly not.

Q Did you believe that Dorothy Day was connected with an anarchist journal?

A Not in the way it sounds. You could make a theoretical argument that the Catholic Worker was intended by Peter Maurin, one of its founders, to be a kind of New Testament style governmentalist organ, but that's not what the reader hears when he sees that such and such is an anarchist journal.

Q Do you believe that Dr. G. Elson Ruf was a Marxist

A No.

Q Who was Dr. G. Elson Ruf?

A Dr. G. Elson Ruf was a very distinguished Lutheran churchman. If anything, inclined to -- well, certainly an establishment figure on the conservative side in the Lutheran Church.

Q Who is A.J. Muste?

A A. J. Muste was a Trotskyite who became a Christi His career rather remarkably parallels Dorothy Day in this whole thing, and a Presbyterian clergyman, one of the two

executives of the Fellowship of Reconciliation, which is a pacifist interdenominational organization, and is one of the [illegible] saintly persons that I have been privileged to know in my life.

Q Who is Stringfield O'Barr?

A Stringfield O'Barr I have met but I don't really know him. He was at one time dean of St. John's College, Annapolis, Maryland, where he introduced Hutchin's great book [illegible]kind of reform of the curriculum.

Q Did you believe that Dr. Ralph Bunchehad a sick mind?

A Hardly.

Q Did you believe that Cyrus Eaton was a leftist cripple?

A I certainly would not refer to him that way.

Q Did you believe that J. Robert Oppenheimer was an agent of the Soviet Union?

A I don't think that is proper language. I wouldn't use that language.

Q What did you know of Bayard Rustin?

A I've known him for a long time. He has been for a number of years now the executive director of the A. Philip Randolph Institute. He was at the time I was in New York an active person in the anticommunist work and student work.

He was a young communist.

He left the YCL in 1939, in that period. There were a lot of people -- Joe Lash was another one who broke at the time of the attack on Finland. That may have been the time of his personal crisis, but he has been since 1939 an open and vocal anticommunist.

Q Would you describe Dr. Martin Luther King as a doctor of lawbreaking?

A No indeed.

Q Did you consider that Dr. King flaunted the law?

A This, I would think, was a matter of opinion. If you are speaking of the highest law of the land, the answer is certainly not. He upheld it. He found himself up against local ordinances and officials.

Q Did you consider that he taught anarchy?

A No indeed.

Q Would you consider that Arthur Schlessinger, Jr. is a liar?

A I certainly would not speak of him in that way, not at this point. I suppose he's like the rest of us.

Q We will leave Gore Vidal to Gore Vidal. He has been tortured enough in this lawsuit.

We also talked about certain false statements you considered Mr. Buckley made about yourself. Did you

consider that Mr. Buckley made those statements intentionally; that is, knowing that he was saying something that was false?

A Well, the first item which was published quoting Gaskie, I assumed that he didn't know better; that is, that he thought he was getting an honest report, although he rather jumped. If he had really wanted to he could have checked out who I was and even given me a telephone call.

I can't remember if there was another communication there. Shall I check it to be sure?

THE COURT: What is that?

THE WITNESS: The sequence of the Buckley-Littell thing.

Oh, yes. Then there came an attack on me saying that I had given an address, and at that point I wrote -- in the first place I was provoked but I wrote as diplomatic a letter as I could on the encouragement of a couple of friends, mutual friends --

THE COURT: We have been over this many, many times

A I think that he had deliberately and maliciously attacked me.

MR. PLASBAND: That's what I wanted to establish, your Honor.

Q Now, you refer to the fellow traveler as one who can have the attribute as functioning as a deceiver. Can

you give me some other examples of people who have functioned as a deceiver, either intentionally or otherwise?

A Well, let me give an example out of my personal experience because one remembers events in his own life better than he remembers abstract interpretations of three or four or six or eight years ago, although I think if we wanted to take the time I could certainly give many illustrations.

The World Peace Conference, so-called Prague Conference had as one of its top executives a man whom I loved and admired very much, Professor Josef Hromadka, who was involved in the church struggle with Hitler and was in this country at Princeton during the war and went back to help rebuild his homeland of Czechoslovakia. He was a professor in the Jan Hus faculty in Prague.

I talked with him at different times about this because the World Peace Conference is a communist front. I felt that it was wrong, and even though he was older than I our relationship was such that I could -- I remember walking at the Ecumenical Institute in Geneva, down the green meadow there below the Institute and trying to get through to him with proper politeness why it was wrong.

He actually died a broken hearted man because the communists moved in, unable to control the thing as

completely as they wished, at the time of the Czechoslovak-Russian military encounter when they cleaned out the moderate communists and reStalinized the place, they simply kicked out Ondra, who was the Czech secretary, and put in a hundred percent agent.

But Professor Hromadka functioned in that capacity as a deceiver; that is, he helped people to misunderstand the situation.

I debated also with John Howard Yoder, a Mennonite leader who is now president of their Seminary in Indiana, and one of my twenty-five year friends, close associate, that he should not go to Prague, certainly not after they purged the organization completely and took out all the innocents as far as the operation was concerned. The Mennonites nevertheless sent a delegation. They are peace-loving Christians and they feel they should lie with everyone that wants peace.

I feel that is the function of a deceiver. It misrepresents the real nature of the organization. It doesn't mean that I attribute malice to Hromadka. He was one of the purest spirits I have ever known. I certainly don't attribute malice to Dr. Yoder. But the function is that of a deceiver.

Q Do you think that either of them intended to

deceive?

A I'm sure they didn't in that sense.

Q Would they be the innocents that you referred to in your book?

A There is a distinct overlay between innocents and fellow travelers.

Q And these two gentlemen that you just talked about would they be performing the function of the fellow traveler in doing what they did?

A In that capacity, that's all they were. They didn't run anything. They were simply in that case fellow travelers.

Q Now, we have seen this phrase, "The National Revie and On The Right have been important and useful agencies for radical right attacks on honest liberals and conservatives."

By that were you suggesting that the National Review and On The Right actually make the attacks or some other meaning? I will show you the reference.

A Well, I was thinking of these parallelisms and syncopations, and so forth. That is what was in my head as nearly as I can remember when that was written. And where my attention would be called to some situation in which predictably they would appear in the National Revie

or in Mr. Buckley's column something which had begun to appear behind the field in radical right circles or on fewer occasions perhaps, I don't remember exactly, things which had been published or interpretations which had been published in the National Review or the Buckley column would be apparently used as authoritative information in Courtney or Hargus or Dundy or something like that.

Q Any other use that we can think of that the radical right made of National Review?

A Well, to me it was striking that for so long among the magazines which were innocently recommended and displayed at conventions where the readers were urged to write and ask the airlines to carry it on board, and so forth, the John Birch Society Bulletin was pushing National Review. It certainly wasn't because they thought it was like Better Homes And Gardens or something. It was because they liked the line. That's the way it seemed to me, seems to me even yet, the line that then was.

I think long ago we agreed that there had been some -- what I at least would call some betterment and moderation in the National Review.

Q Now, referring to that list of individuals that I just asked you about before that were contained in the MacMillan trial brief, were they among the people whom you

believed could have taken Buckley to court?

A I think so.

Q Did you think so at the time you wrote this book, "Wild Tongues"?

A Well, I can't say that I had the table of names in front of my head, so to speak, when I wrote it. But that was the kind of memory which went into this judgment.

Q All right. Now, did you intend to say, referring to this Westbrook Pegler reference, did you mean to say that Mr. Buckley lied day after day about any individual?

A I don't think he did.

THE COURT: You what?

THE WITNESS: I don't think he did.

Q Did you believe or have the notion when you wrote this book that someone would take that statement as meaning that Mr. Buckley lied day after day about any individual?

A No. That sort of hit me as a kind of new idea, because what I was really trying to say, however infelicitous it was, that I think he could be taken to court by a number of individuals.

MR. BLASBAND: Judge, could I have about three minutes just to look over things?

THE COURT: Yes.

MR. BLASBAND: We may be right at the end.

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THE COURT: We will take a short break now. I think we can finish it up by 2:15. We will take five minutes now.

[Recess]

MR. BLASBAND: I have two more questions of Dr. Littell. I don't know whether he wants to add anything. Then I have some deposition testimony to read into the record.

THE COURT: All right.

BY MR. BLASBAND:

Q Dr. Littell, referring to this passage at page 51 of "Wild Tongues, The National Review and On The Right frequently print news items and interpretations picked up from the openly fascist journals."

Did you intend to state that Mr. Buckley picks up these items with the intention of deceiving?

A Well, no. That is the most succinct answer there is.

THE COURT: Most what?

THE WITNESS: Succinct.

Q Now, when you wrote this work did you entertain the thought that someone might, in reading the work, understand those words as suggesting Mr. Buckley would pick up news items for the purpose, intentional purpose of deceiving?

A No. That wasn't what I had in mind.

Q My last question is have you had any awards of any kind since your school days, honors?

A Yes.

Q Tell us about them, please.

A Well, when I was leaving Germany in 1958 I received the Grand Order of Merit from President Heuss, of the German Federal Republic for my work for democracy and against -- how was it stated? There was something which included what I had done to interpret the church struggle, and so forth. I don't remember the exact citation.

I also received the highest honorary degree any Protestant can get; namely, the Doctor of Theology Honoris Causa. That would be Doctor Thaol Honoris Causa. This cited my work with the German churches and the theological faculties.

MR. BLACKMAN: That's all I have, Judge.

THE COURT: You said you wanted to take about three minutes. You are not limited to three minutes, but you had something you wanted to cover. I think you ought to do that before Mr. Mahoney has anything. He may have a little further questioning.

Is there anything you want to cover?

THE WITNESS: The only thing I could remember, your Honor, that seemed to me to be left hanging, since

we have spent a good deal of time on it in the earlier days, was whether it is absolutely clear the distinction which I made between the radical right, the right wing and fascism.

Your man was going to give me a blackboard, or shall I draw it?

THE COURT: The thing is I can't preserve the blackboard but I can preserve a sheet of paper. Can you use that?

THE WITNESS: I'll try because it is much more intelligent graphically. I don't know whether anybody else wants to look at it.

MR. CALLAHAN: You can pass it around.

THE WITNESS: For years I used the straight line scale, and I notice Mr. Buckley in his discussion did the same thing in which you have, say, communism, socialism, maybe progressive or liberal -- I'm working from left to right here -- and conservatism, what he called principle conservatism, which I would be inclined to call ideological conservatism, but that is another question. Then probably reactionary or reaction and then facsism or Naziism or something else.

Now, the trouble with this scale, as I now see it is, that the person who thinks to himself as an ultra-conservative standing over here someplace has a tendency

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to see everybody in that end of the scale as soft on communism or maybe even a communist. The person who thinks of himself as being just the most progressive person in the world tends to look on the scale and everything flattens out in a way and pretty soon everybody over here is a Wall Street lackey or a black reactionary, and then finally a fascist.

Now, I think a more helpful way of graphing this whole relationship is a horseshoe. You then have the truth, which is that communism, extremism, and fascist extremism are really very much like each other and you have this curious record as a matter of fact in the '30's, in DDR, in Argentina, how you get this ambivalence where people can swing back and forth very readily between two closed ideological systems.

Then you have communism, socialism, you can say social democracy, and you can break it down in the ways you wish. I will make it quickly.

Now, if you speak loosely or carelessly, as is sometimes done, you will end up with a right wing or a radical right way of thinking, a reference which doesn't make the necessary distinction and somebody will think, well when you say radical right you mean fascism. As a matter of fact, the radical right is a much bigger, if you are going to use that at all, it is a much bigger area and in-

cludes people then who are sympathetic to or all kinds of satellite groups.

The same thing is true of the radical left. If you do this then, it is possible to make a very sharp distinction, and that's what the whole basic purpose of the book was, to make a basic distinction between honest conservatism, however hard-headed, and fascism, and honest liberalism, however idealistic, and communism or fellow traveling with communism.

I think that is the most problem. Because the truth is during the '30's and '40's, as the records plainly show, many self-styled liberals did not draw the line at fellow traveling, a whole popular front story. I'm not talking technically about Espeonich. I think that is the basic crisis in conservatism today.

The reason I feel very keenly and the reason why I write as strongly about it is to distinguish between conservatism, ultraconservatism, and fascism. People are called unltraconservatives who in my mind are clearly fascist I think the ultraconservatives are the ones that want to make that distinction in long haul.

Your fellow traveler is a rogue common that simply moves in and out, sometimes over a wide orbit, sometimes under a closer orbit, sometimes wittingly. think if a

person has been on the letterhead of thirty different communist front organizations, the question of whether he can still be called an innocent is highly dubious. If he appears on two or three he may be an innocent. He simply doesn't realize what he is doing.

This fellow traveler role, this person is not under discipline. He is not run by any of these people, he is not an agent, not doing things because he is ordered to do something, but he somehow or other is in this gravitational orbit. His sympathies seem to lie and the issue which he emphasizes seems to be the issues which you would expect at a certain time and way, and so forth, from a person who is a fellow traveler of one of these gravitational areas, not all of them.

Sometimes they may be opposed on a given issue.

THE COURT: That is the rogue common idea. What is a rogue common now?

THE WITNESS: A rogue common is one that does not operate like Haley's Comet or one of these absolutely dependable orbits and sequences and timing, and so forth, but which appears erratic and moves erratically in the universe.

THE COURT: To your knowledge someone who moves in and out, depending on issues, out of which you call this

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orbit of the right or left?

THE WITNESS: The gravitational area.

THE COURT: Let us mark that as an exhibit, the next defendant's exhibit, and you figure out the number.

MR. BLASBAND: Should it be offered, your Honor?

THE COURT: It will be received.

xx [Plaintiff's Exhibit 111 received in Evidence]

CROSS-EXAMINATION

BY MR. MAHONEY:

Q At the time you wrote in 1969, one of the things that was on your mind was how National Review was promoted. You had references to National Review being promoted by the John Birch Society, asking people to get it on the airlines, and so forth.

I direct your attention to Exhibit AF, which is an article and commentary for August 1961, and I ask you if that is the reference that you had in mind?

A Well, I had in mind a number of references. I remember some kind of a political rally in Chicago and reports on similar events in Boston where some information center, which was a Birch front, was pushing and selling National Review.

I know there are in evidence several items showing that along with the hard core of five or six magazines and

newspapers, some of which Mr. Buckley himself doesn't like, as he said here, the National Review was pushed and promoted. That's what I had in mind.

Q You were aware of the attack of the attack on the John Birch Society on National Review, which was Exhibit 42 in evidence in this case, in October of '65, were you?

THE COURT: We had that fifteen times really.

MR. MAHONEY: I'm laying a predicate, your Honor.

THE COURT: All right.

Q Do you know of any promotion of National Review of the sort described in Exhibit AF that occurred after October 1965?

A By the Birchers?

Q By the Birch Society.

A I don't recall any, no. I think it would be rath unlikely.

Q Now, in writing "Wild Tongues," the passage on the fellow traveler from pages 50 to 52, you presumably had in mind, since you mentioned them both, Mr. Von Ribbentrop and Mr. Buckley. Did you have in mind when you were writin those passages the two other gentlemen whom you described as fellow travelers in your direct examination by Mr. Blash There were two examples in your examination by Mr. Blash

THE COURT: Which were they?

MR. MAHONEY: He would know.

MR. BLASBAND: They were examples of the deceiver, the unintentional deceiver.

Q The man who went to the Peace Festival.

A Just now?

Q Just this minute, yes. A few minutes ago.

A What I was thinking of --

THE COURT: Let's just get the names. I don't mean to cut anybody off but we have to move on. The man who was the man you spoke to in Geneva.

THE WITNESS: Josef Hromadka.

THE COURT: The other man was whom?

THE WITNESS: John Howard Yoder.

THE COURT: The question is what, Mr. Mahoney?

Q The question is did you have them in mind when you wrote the passage about the fellow traveler that appears on those pages in "Wild Tongues"?

A I had in mind an experience in which I have known dozens of fellow travelers. This isn't the only time I have written on the fellow traveler. I have written papers for my students. I have criticized, discussed it in the seminar. I have tried to distill out of this some way of defining certain things.

I will say one thing in favor of what could have been a better book: It was an effort to establish, for the first time anybody has attempted to do it, a grid, a definition procedure. When I was talking about a fellow traveler, I've known dozens of fellow travelers, left and right. I was simply writing with as much movement as possible distilling out my experience in this.

I can name you plenty of others. Harry Ward and Jack McMichael are mentioned in the appendices here.

Q And this exhibit that has just been put in, Defendant's Exhibit AK, and in your discussion with respect to it you talked about the radical right being a much broader and looser concept than fascist. During our prior examination I referred you to pages 59 and 60 and the definitions of radical right and fascist and the definitions discussion there.

Is there any place in the book "Wild Tongues" where this point is made, that the radical right is a much broader and looser concept than fascist?

A. Well, I was asked one time whether we ought to have a glossary of terms and I rather regret now that we didn't --

THE COURT: Just to save time, is there any place? We will read the book obviously.

THE WITNESS: I haven't found any specific place where there is a list of definitions except this one place.

THE COURT: Where there is the kind of statement Mr. Mahoney is asking about, do you recall any such statement?

THE WITNESS: No. I'm not sure whether there is or isn't.

MR. MAHONEY: That's all.

THE COURT: Do you have anything?

MR. BLASBAND: Just some testimony.

THE COURT: How much?

MR. BLASBAND: Five, ten minutes, your Honor. We are going to come back to argue, as I recall; is that correct?

THE COURT: Let's complete the record now. The best thing to do is just to --

MR. BLASBAND: It could be handled informally.

THE COURT: If you don't have any objection, we can put it in as an exhibit and mark the pages. In other words, designate what you want included. It doesn't have to be read.

MR. BLASBAND: Fine.

THE COURT: What are you designating?

MR. BLASBAND: Mr. Buckley's deposition.

THE COURT: Mark that as the next defendant's exhibit, which would be what?

MR. CALLAHAN: Defendant's Exhibit AL.

THE COURT: What parts of AL do you want to introduce on behalf of Dr. Littell?

MR. BLASBAND: AL consists of two transcript volumes, your Honor.

THE COURT: This is the deposition of whom?

MR. BLASBAND: William F. Buckley, Jr., and the dates are --

THE COURT: I don't need to know the dates. This is Mr. Buckley's deposition, right?

MR. BLASBAND: Yes.

THE COURT: Designate the parts.

MR. BLASBAND: We had better have the dates because there is an earlier transcript that is not going to be used.

December 10, 1973 transcript and the December 12, 1973 transcript.

MR. MAHONEY: The whole thing?

MR. BLASBAND: No. Page 79 beginning at line 19, through page 81 up to line 6; page 82, line 21 to page 83, line 17; then page 102, line 18 to 103, line 6; page 137, lines 4 to 11; page 136, lines 17 through 22; then page 137

lines 17 through 25; page 142, line 10 through line 18.

THE COURT: Any objections to those deposition sections?

MR. MAHONEY: No. I haven't read them. I would like to reserve the right to send you a letter and call your attention to other portions that may have to be read with them.

THE COURT: Do you have any further proof you wish to put in?

DR. LITTELL: Not unless you have a question.

THE COURT: I have no further questions.

I think everybody rests at this point, except we will permit Mr. Mahoney to write a letter and designate portions of the Buckley deposition. Please don't have it repeat what he has testified. Anything that is absolutely essential to complete the record and I will have a letter within a week.

Now, let's take a minute to discuss our schedule. The testimony of Dr. Littell is going to be transcribed, right?

MR. MAHONEY: Mr. Callahan can tell you. He talked to the reporters.

MR. CALLAHAN: At this point there are two ways they can do it, on the regular basis or the expedited basis.

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On the regular basis it wouldn't be ready for another four weeks. On the expedited basis it would be about ten days.

THE COURT: I don't know that there is any real need to get it on an expedited basis.

Off the record.

[There is a discussion off the record]

THE COURT: What I started to tell counsel and Dr. Littell off the record is that I think the previous briefs analyze sufficiently what I would call the political characterizations of the alleged libelous passages and the documents and the testimony relating to that subject.

Unless somebody wants to add something on that point, I don't ask for it. I don't want effort duplicated. But think the previous briefs do not touch sufficiently on what I would call the questions about deception, bad faith, and so on.

Let me say I don't think the record has really been developed on that by the time we adjourned, so I don't think counsel could really do it. But now in view of a full record I think that what Mr. Mahoney has to do is prepare a memorandum with a very careful analysis of the way in which the plaintiff contends that this passage charges things or accuses Mr. Buckley of things other than being of a certain political spectrum. In other words, to what

extent do you contend that this passage accuses Mr. Buckley of deception, bad faith, lying, bad or misleading journalistic practices? To what extent do you say it accuses Mr. Buckley of any other specific things other than being in a certain place in the political spectrum? Do you understand me?

MR. MAHONEY: I understand you.

THE COURT: Second step, and I would like you to keep your approach very much tailored to the law, remembering that Dr. Littell has no obligation per se to get backup. Just to tell me that there is not backup for a particular passage doesn't really tell me anything. Cast your memorandum in terms of the time problem. You have the burden of proving that Dr. Littell actually knew of the falsity or that he actually believed that there was probable falsity and was reckless in his regard of that probability. If I'm not quite phrasing it right, you can correct me.

Now, what does the evidence show on that question? You have to take the testimony of Dr. Littell as to what he believed and you are going to have to face up to the fact that Dr. Littell has testified in many respects that he [believed] Mr. Buckley did state falsehoods about people and he has cited instances of that.

What you have to do is to show me what kind of

a case you have against Dr. Littell on those points, keeping precisely in mind the Time-Sullivan and Burton proof. You are going to have to take into account his testimony that Mr. Buckley made certain misrepresentations, the documents which he says illustrate those misrepresentations, and then you are going to have to tell me how it is that you have proved that there was bad faith or malice in the Time-Sullivan sense.

In that connection, and you are going to have to think this through, I assume you would argue, and I think you can argue reasonably, and we have discussed this before, that the book could be taken to charge Mr. Buckley, for instance, with being an intentional deceiver on behalf of the radical right organizations.

I'm not saying whether I would read it that way and write a decision holding that is what it means. I am just saying that you have to reckon with this issue: In what way does Dr. Littell state that his intention is different from the way that you believe the book should be read? The book might mean one thing to you. Dr. Littell says he didn't mean to say that, he didn't mean to call Mr. Buckley an intentional deceiver. How does that fit in with Time-Sullivan? Does that prevent you from carrying your burden of proof of showing malice?

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This is the issue we have talked about several times off the record. I think the way the proof shapes up, this is a very crucial phase of the issues.

Now, how will Dr. Littell present his side? Are you going to undertake to brief and argue for him or is he going to do it and how is this going to be done? That has a very crucial effect on our schedule because I know you are going to go to Montana.

MR. MAHONEY: There is one problem of a practical nature. As plaintiff we are willing to pay for the original and a copy of the transcript. Neither Dr. Littell nor Mr. Blasband want to pay for a copy of the transcript. Of course we are not going to buy it for them.

THE COURT: You don't have to buy it for them.

MR. MAHONEY: I thought you should be aware of that

THE COURT: Mr. Blasband, if you or Dr. Littell want the transcript --

MR. BLASBAND: This has been solved another way in another situation. I really would not buy a copy of the transcript. If Dr. Littell has the money and wants to buy one, that's fine. If not, perhaps the Court would make available its copy for my borrowing it and writing -- if I am going to write a brief or anything like that, if I can borrow the Court's copy.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

THE COURT: I will be happy to do so. I think that will work out. There will be a copy on file here. That certainly can be done.

Are you going to undertake to write his brief? I think we should have plaintiff's brief and Dr. Littell should have the opportunity to answer it.

Are you going to file a memorandum on behalf of Dr. Littell?

MR. BLASBAND: Dr. Littell, would you want me to do that?

DR. LITTELL: I think that is asking for considerably more than I have a right to ask of you.

MR. BLASBAND: If the Court asks, I'll do it.

THE COURT: I would certainly appreciate that. You consult with Dr. Littell on that.

MR. BLASBAND: I should like, I think, a couple of weeks after receiving the plaintiff's brief, if I may.

THE COURT: In view of the need to get the transcript, in view of the need to have briefing, this is going to take some time. So I would say that there is not any reason to spend a lot of money getting expedited transcript

MR. MAHONEY: I appreciate that.

THE COURT: That two weeks difference doesn't make any difference to you, does it?

MR. MAHONEY: No.

THE COURT: You don't have to stand that cost. When will the transcript be ready?

MR. CALLAHAN: I figure it will be about three to four weeks.

THE COURT: We should have the transcript by July 12. How much time do you need to submit your memorandum? Let's say from July 12 how much time?

MR. MAHONEY: Simply because of other deadlines that are falling at the same time I would like to have -- when would you anticipate oral argument?

THE COURT: We will see how we end up, but I know people have vacations.

MR. MAHONEY: Unless it throws things out of kilter, I would like to think about maybe early August, August 10th, simply because I know of two or three major things I have to have in in late July.

THE COURT: Let's say that we will have Mr. Mahoney's brief -- well, you give me the date.

MR. MAHONEY: Let's say Friday, August 9th.

THE COURT: How much time after that do you want?

MR. BLASBAND: If I may, your Honor, I would like two weeks to the 23rd.

THE COURT: Now, I will be gone in August.

MR. BLASBAND: Then I would like to the end of August.

THE COURT: You can make arrangements with my office to get the transcript.

MR. BLASBAND: May I have until the end of August in case I want to go away on vacation?

THE COURT: We will say to the 30th of August.

I think that what we ought to do is to see if anybody really wants oral argument. We have had a very considerable amount of discussion all through the trial. Let's see if anybody really wants it and if it is necessary.

MR. MAHONEY: Simply because, your Honor, this will have been spread out into four days of trial, another day of trial, another day and then a briefing schedule later on, I think it might focus things.

THE COURT: Oral arguments always helps me a lot of anybody wants to do it.

I will check the calendar.

When are you going to be back in the East, Dr. Littell? By September?

DR. LITTELL: I will be back in the States the 12th or the 13th.

THE COURT: Of September?

DR. LITTELL: Yes.

William F. BUCKLEY, Jr., Plaintiff,

v.

Franklin H. LITTELL, Defendant.

No. 70 Civ. 2844.

United States District Court,
S. D. New York.

May 23, 1975.

J. Daniel Mahoney, Windels & Marx, New York City, David P. Callahan, Wormser, Kiely, Alessandroni & McCann, New York City, C. Dickerman Williams, Baker, Nelson & Williams, New York City, for plaintiff.

David Blasband, Stanley H. Schneider, Linden & Deutsch, New York City, for defendant.

Dr. Franklin H. Littell, pro se.

OPINION

GRIESA, District Judge.

This is a defamation action, commenced on July 1, 1970 by William F. Buckley, Jr., seeking damages for an alleged libel contained in a book entitled *Wild Tongues*. The defendants originally sued were the author of the book, Dr. Franklin H. Littell, and the book's publisher, The Macmillan Company.

The case was tried by the court without a jury. During the trial, Buckley and Macmillan reached a settlement and Macmillan was dismissed from the case.

Littell has appeared pro se in this litigation. However, it should be noted that following the disposition of the claim against Macmillan, the attorney who had been acting for Macmillan, David Blasband, Esq., continued in an *amicus curiae* capacity, and assisted in briefing and arguing the position of Littell. For this, the court wishes to express its appreciation.

This decision constitutes the court's findings of fact and conclusions of law with respect to Buckley's claims against Littell. For the reasons which will be hereafter explained, I have concluded that the writing in question is libelous and that Buckley is entitled to judgment. I further hold that the First Amendment protection enunciated in New York

Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), and subsequent Supreme Court decisions, does not bar recovery by Buckley under the circumstances of this case.

The Alleged Libelous Passage

The book *Wild Tongues* was published by Macmillan on October 6, 1969. It was voluntarily withdrawn from distribution by Macmillan in July 1970, when the present action was commenced. Prior to this time the book sold 941 hard cover copies and 8,226 paperback copies.

The alleged libelous passage occurs at pages 50-51 of *Wild Tongues*, in which Littell characterizes Buckley as "the outstanding representative" of the function of "fellow traveler" with respect to fascism in the United States. This passage is contained in a subchapter entitled "The Fellow Traveler", which reads as follows (pp. 50-52):

"Whisking about the edges of any totalitarian movement is the 'fellow traveler' pirouetting into the whirlpool and out again as the vortex draws more powerfully and then recedes. His role is as dangerous to social health and as important to building up totalitarian parties as the equally ambiguous figure of the pseudo-conservative. The fellow traveler to the Communists or fascists is a fascinating psychological study: fascination with brute force and its misuse plays an important role. Students of communism have commented at length upon the party member's 'psychology of the pawn'—his need to be misused and abused, to the destruction of his own personhood. The fellow traveler's responses are essentially feminine, registering the ambivalence of love and hate toward the master and mover.

"The fellow traveler refuses to accept discipline and is therefore both used and despised by the party leaders. At the same time, he is dangerous to political movements and republican institutions of integrity, because he functions as a deceiver. He appears at times to be independent, but, when a major issue is at stake, he follows the party line.

"Perhaps the most famous type in recent years was Von Ribbentrop, pseudo-intellectual and champagne salesman, who was of great use to the Nazi government in giving an aura of respectability to international policies which, without a debonair front, might have been recognized readily for what they were: simple thuggery.

"In America, the outstanding representative of this function is William F. Buckley, Jr., editor of *The National Review* and perennial political candidate. Buckley got his start as a smart young 'intellectual' by writing a book, *God and Man at Yale*, upon graduating from his *alma mater*. The book has been soundly exposed and condemned by professors and overseers and loyal alumni for falsely twisting facts and for sheer malice. *The National Review* and his syndicated newspaper column, 'On the Right,' frequently print 'news items' and interpretations picked up from the openly fascist journals and have been important and useful agencies for radical right attacks on honest liberals and conservatives.

"Buckley has been caught out for misquotations (with quotation marks!) and for repeating radical right malice and rumor, but he never admits a mistake or apologizes to the victims. Like Westbrook Pegler, who lied day after day in his column about Quentin Reynolds and goaded him into a lawsuit, Buckley could be taken to court by any one of several people who had enough money to hire competent legal counsel and nothing else to do. Reynolds won his suit, of course, but it took all of his time and resources for most of three years, and he died shortly thereafter.[1]

1. The alleged libelous passage, as referred to in the complaint, included only these first five paragraphs of "The Fellow Traveler". At the trial of the action Buckley sought to

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"As his lack of respect for the rules of the dialogue and his constant undermining of respect for American leadership and institutions reveal, Buckley is not a 'conservative' at all. The streak of ideological taint and moral nihilism is too pronounced, even though he is probably not under the direct control of any subversive party. When he publicly criticized Robert Welch of the John Birch Society, Buckley did not do it because Welch led a fascist-type conspiracy and used immoral tactics to undermine the constitutional order. Buckley said Welch was too extreme to be successful. When Dr. Martin Luther King, Jr. was assassinated, Buckley wrote in his column a tortuously reasoned explanation that the murderer represented the error of an independent conscience, which was Dr. King's error too.

" 'Truth,' asked Pilate, 'What is truth?' "

Description of the Parties

a. *William F. Buckley, Jr.*

For many years Buckley has been the owner and editor-in-chief of *National Review*, a well-known fortnightly journal founded in 1955. In 1968–69, at the time of the events involved in this lawsuit, *National Review* had a circulation of about 100,000 copies per issue. Its current circulation is about 110,000 copies per issue. Since 1964 Buckley has been the author of a syndicated newspaper column entitled *On the Right*, appearing three times a week. In 1968–69 the column was carried by about 250 newspapers. Today it is carried by 350 papers throughout the country. Buckley hosts a weekly television show entitled *Firing Line*, which was carried by about 75 commercial television stations in 1969. Since then his program has been transferred to the Public Broadcasting Service network, and is now carried on more than 200 television stations in this network. The television program receives financing from a Ford Foundation grant.

The evidence in this case indicates that in 1968–69 Buckley's column *On the Right* was the third most widely sold column of political commentary in the country—ranking only behind the columns of Jack Anderson and David Lawrence. Today, following the death of David Lawrence, the Buckley column is second only to the Jack Anderson column.

Buckley is the author of ten books dealing mainly with political subjects. He has edited four other books, and has contributed materials for still other books and also for various magazines.

Buckley delivers between 50 and 60 lectures a year, mainly on political and educational matters.

Buckley is chairman of the board and part owner of The Starr Broadcasting Group, Inc., which owns radio and television stations as well as a book publishing company.

In 1965 Buckley was the unsuccessful Conservative Party candidate for Mayor of New York City. From 1969 to 1972 Buckley served on the five-member Advisory Committee on Information of the United States Information Agency. In 1973 Buckley was appointed as public member of the United States delegation to the 28th General Assembly of the United Nations.

It is stipulated that Buckley is a "public figure" as that term is defined in the cases dealing with First Amendment restrictions on libel actions. *See* Curtis Publishing Company v. Butts, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967).

amend his complaint to include the remaining two paragraphs of the subchapter. Although the amendment was denied as belated, it became clear during the trial that these remaining paragraphs of the subchapter, like other portions of the book, must be considered in order to put the alleged libelous passage in context. Therefore, these paragraphs are quoted here.

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b. *Franklin H. Littell*

Littell is, and at the time he wrote *Wild Tongues* was, a professor in the Department of Religion at Temple University in Philadelphia, Pennsylvania. Following college and seminary training, Littell was ordained a Methodist minister in 1941. Littell obtained a Ph.D. degree in church history from Yale University in 1946.

In 1950–51 Littell was chief Protestant advisor to High Commissioner McCloy in Germany. Littell has held professorships at Emory University, Southern Methodist University and Chicago Theological Seminary. From 1960–63 Littell served as president of Iowa Wesleyan College, after which he took his present position at Temple University.

Prior to the trial of this action, Littell had written twelve books about subjects such as religious liberty and struggles between church and state. Two more books were in progress.

In 1966 Littell became the chairman of a new organization known as the Institute for American Democracy ("IAD"). The avowed purpose of the organization was to combat political groups and individuals associated with what were regarded as the extreme right and left of the American political spectrum. IAD published a periodical entitled "Homefront".

Buckley-Littell Dispute Prior to Publication of Wild Tongues

Following the formation of IAD under Littell's chairmanship, IAD was the subject of critical comment from various sources, including Buckley's *National Review* in its issue of January 10, 1967.

On August 15, 1967 *National Review* carried a brief report regarding a speech which Littell was said to have made to the National Education Association. According to *National Review*, Littell had attacked "right-wingers" as being disloyal, and had stated that such persons needed to be "muted and rendered ineffective".

The August 15, 1967 *National Review* item led to an exchange of correspondence between Littell and Buckley, in which Littell accused Buckley of misrepresenting him and his views in various ways—principally in failing to point out that Littell was attacking extremists of *both* the left and the right.[2] Buckley rejected the charges. In addition, Buckley devoted one of his syndicated columns *On the Right* in February 1968 to a sharp criticism of IAD and Littell, whom Buckley termed "an abusive rhetorician." The title of this article was "Who Are the Totalitarians?" Finally, Buckley wrote an item for the March 12, 1968 *National Review* which quoted excerpts from the recent exchange of letters, and which again spoke critically of the IAD and Littell.[3]

The Writing of Wild Tongues

Littell began work on *Wild Tongues* in the fall of 1968 and turned over his manuscript to Macmillan in March 1969.

Most of the book was apparently prepared by putting together various papers which Littell had written for seminars or other purposes. However, the section on Buckley was something which Littell wrote afresh.

Following the submission of Littell's manuscript to Macmillan, the editors in charge of the project at Macmillan directed that the book be submitted to counsel for review regarding possible libel problems. It appears that the only portion of the passage regarding Buckley which Macmillan's attorney ques-

2. The August 15, 1967 *National Review* item was based, not upon the actual text of Littell's speech, but upon an article by a newspaper reporter named Gaskie. In addition, it appears that Littell never actually delivered the speech, although the text may have been read on his behalf at the NEA.

3. Prior to the time Littell wrote *Wild Tongues*, he had seen the *National Review* item of August 15, 1967 and the *On the Right* column of February 1968. However, he had not seen the March 12, 1968 *National Review* item.

tioned was a sentence which, in the manuscript, read as follows:

> "Buckley has been repeatedly caught out for deliberate misquotations (with quotation marks!) and for repeating radical right malice and slander, but he never admits a mistake or apologizes to the victims."

Macmillan's attorney requested documentation to support the statement that Buckley had knowingly published misquotations and repeated malicious and false statements. In response to this request, Littell's secretary sent Macmillan a copy of Buckley's *On the Right* column "Who Are the Totalitarians?" and some of the correspondence between Buckley and Littell which occurred in early 1968. This documentation was deemed by Macmillan's attorney to be insufficient. However, the book was on a rush schedule to obtain maximum sales to a large Methodist women's organization. The question of Littell's reference to Buckley was resolved by a change in wording. Macmillan requested that the sentence described above, as originally proposed by Littell, be changed to remove the words "repeatedly" and "deliberately" and to substitute "rumor" for the word "slander". No other changes were requested of Littell in the passage regarding Buckley. The Macmillan editors and Macmillan's counsel indicated to Littell their acquiescence in the following passage as revised:

> "Buckley has been caught out for misquotations (with quotation marks!) and for repeating radical right malice and rumor, but he never admits a mistake or apologizes to the victims."

Interpretation of Passage Regarding Buckley

Wild Tongues is 184 pages long. It is subtitled, "A Handbook of Social Pathology". One of the main purposes of the book, as Littell describes it, was to inform members of the various Christian denominations in the United States regarding what Littell considered to be the threat to the churches posed by extremist political groups. Littell and Macmillan had received indications that the book might be used in study programs of the Women's Division of the United Methodist Church. The Women's Division numbers about 1,000,000 members. The actual sales of the book did not meet expectations.

Although *Wild Tongues* addresses itself to both the extreme left and the extreme right, it is fair to say that attention is mainly focused on the right wing. One of the principal themes of the book is that there is more actual and incipient fascism in America than most persons have any awareness of. A substantial part of the book is devoted to listing and describing certain characteristics which are said to be the earmarks of totalitarian organizations and philosophies, both of the right and the left. Littell's message is that if a group or organization has a majority of these characteristics, it should be recognized as being an incipient totalitarian movement. Littell urges that such movements are essentially conspiracies against the American government and should be outlawed.

There has been a certain amount of debate in this action as to what the alleged libelous passage regarding Buckley actually means.

Buckley contends that the book labels him as a fellow traveler of totalitarian fascism, and accuses him of misusing his prestige as a journalist to deceive the public by purveying fascist views under the guise of responsible conservatism. Buckley contends that the book further accuses him of engaging in libelous journalism of the kind authored by Westbrook Pegler against Quentin Reynolds resulting in a libel judgment against Pegler in the noted case of Reynolds v. Pegler, 223 F.2d 429 (2d Cir.), cert. denied, 350 U.S. 846, 76 S.Ct. 80, 100 L.Ed. 754 (1955).

Littell asserts that Buckley exaggerates the import of the alleged libelous passage. *First*, Littell denies that the

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book accuses Buckley of being a fellow traveler of fascism. Littell argues that the book, properly interpreted, goes no farther than associating Buckley with the "radical right"—a political grouping discernibly different from fascism. *Second*, Littell denies that the book charges Buckley with *intentionally* using his journalistic position as a cover for fascist propaganda. Littell urges that the book only asserts that there is a frequent coincidence of views of Buckley and the radical right, which inevitably results in Buckley giving aid and comfort to radical right groups. *Thirdly*, with regard to the comparison between Buckley and Westbrook Pegler, Littell states that he did not intend to accuse Buckley literally of the same kind of conduct engaged in by Westbrook Pegler.

[1-3] The rule of interpretation in a libel case is that words alleged to be defamatory are to be taken in their natural meaning. Courts will not strain to interpret them in their mildest and most inoffensive sense. Mencher v. Chesley, 297 N.Y. 94, 99, 75 N.E.2d 257 (1947). It is necessary to make a judgment based upon the alleged libelous material as a whole, rather than on the basis of isolated or detached individual sentences or statements. November v. Time, Inc., 13 N.Y.2d 175, 178, 244 N.Y.S.2d 309, 194 N.E.2d 126 (1963). The test of whether a passage is libelous or not is what the overall effect would be upon an ordinary reader. Everett v. Gross, 22 A.D.2d 257, 254 N.Y.S.2d 561, 563, 254 N.Y.S.2d 561 (1st Dept. 1964).

[4] If we view the alleged libelous passage in *Wild Tongues* according to these rules, the proper interpretation is not difficult to arrive at. Buckley's interpretation of the book is clearly the correct one. Littell's attempt to suggest less harmful meanings to the various statements is, in my view, totally unrealistic. In this connection, a statement of Justice White in his concurring opinion in Greenbelt Cooperative Publishing Assn. v. Bresler, 398 U.S. 6, 22, 23, 90 S.Ct. 1537, 1546, 26 L.Ed.2d 6 (1970) is apposite. The discussion is in the context of the question of First Amendment limitations on libel actions.

> "Should New York Times Co. v. Sullivan, 376 U.S. 254, [84 S.Ct. 710, 11 L.Ed.2d 686] (1964), be extended to preclude liability for injury to reputation caused by employing words of double meaning, one of which is libelous, whenever the publisher claims in good faith to have intended the innocent meaning? I think not.
>
> * * * * * *
>
> I see no reason why the members of a skilled calling should not be held to the standard of their craft and assume the risk of being misunderstood—if they are—by the ordinary reader of their publications."

In order to explain my conclusion as to the meaning of *Wild Tongues* with respect to Buckley, it is necessary to describe the book in some detail. In the alleged libelous passage, Buckley is charged with being the outstanding representative in America of the function of the fellow traveler, and it is clear that Buckley is being charged with being a fellow traveler of the fascists. Buckley is accused of playing a role dangerous to social health and important to building up totalitarian movements. Buckley is described as having certain characteristics said to be common to fellow travelers of totalitarianism—such as fascination with brute force and its misuse, a psychological need to be misused and abused, and "essentially feminine" responses. Buckley, being a fellow traveler, refuses to accept party discipline, but is nevertheless dangerous to political movements and republican institutions of integrity because he functions as a deceiver.

The alleged libelous passage contains a paragraph about the Nazi Von Ribbentrop. There is a statement to the effect that the Nazis attempted to use Von Ribbentrop to put up a "debonair front" and to give the Nazi movement an aura of respectibility.

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Buckley's name appears immediately following the discussion of Von Ribbentrop. It is said, among other things, that Buckley's magazine *National Review* and his column *On the Right* are purveyors of materials "from the openly fascist journals". Buckley's magazine and column are described as "useful agencies" for radical right attacks on honest liberals and conservatives, and it is said that Buckley has been "caught out" for repeating radical right malice and rumor. The passage states that Buckley "could be taken to court by any one of several people" who could afford to do so, and Buckley is compared with Westbrook Pegler "who lied day after day in his column about Quentin Reynolds", resulting in the lawsuit, which Reynolds won.

In the remainder of the "Fellow Traveler" passage, it is said that Buckley constantly undermines respect for American leadership and institutions, and that he is "probably not under the *direct* control of any subversive party", the clear implication being, as expressly stated in the earlier part of the "Fellow Traveler" passage, that Buckley follows "the line" of subversive parties. Although it is noted that Buckley publicly criticized Robert Welch of the John Birch Society, the reader is led to believe that Buckley has no quarrel with the John Birch Society's "fascist-type conspiracy" and use of "immoral tactics to undermine the constitutional order."

A reader of *Wild Tongues* would obviously not read the "Fellow Traveler" section in isolation. The meaning of this section to him would be colored by what is said in the rest of the book about such subjects as totalitarianism, fascism and the role of the fellow traveler. These other references serve to emphasize the depth of the evil with which Buckley is being charged. They also show that what is said about Buckley in the "Fellow Traveler" section is not merely a string of loose epithets. Indeed the book undertakes to make a kind of scientific definition of fascism in America, and to fix Buckley and others in their relation to such fascism.

The dust jacket of *Wild Tongues* describes the book as follows:

> "WILD TONGUES, a perceptive and trenchant analysis of extremism, provides an authoritative guide to an understanding of the political and religious threats posed by both far right and left. In this pioneering work in establishing a typology of pathological movements and parties, Franklin H. Littell both defines the enemies of liberty and self-government and shows how democratic processes can be strengthened against them. He spells out, in specific terms, what the extremist groups mean to American life and supplies a checklist by which the pathological organization can be recognized."

Wild Tongues starts out by referring to the 1968 presidential campaign of George Wallace. It is said that this campaign was managed by two prominent "fascist type conspiracies"—the White Citizens' Councils and the John Birch Society. The book states that Wallace managed to collect about himself "every one of the organizations devoted to a rightest coup—from the paramilitary Minutemen to the night riders of the Ku Klux Klan" (p. 2).

Wild Tongues speaks of the churches in America as being "under savage attack from the fascist side" (p. 12). Littell quotes a letter from a minister describing the use of various pressure tactics in an attempted takeover of a church by the John Birch Society (pp. 12–14). Shortly before the "Fellow Traveler" section, there is a subchapter entitled "Thunder on the Right" which announces that "the most dangerous internal challenge to America comes from the fascist wing" (p. 35). This subchapter contrasts the "genuine conservatives" with the fascists and their fellow travelers, also labeled as "pseudo-

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conservatives". There is the following passage (p. 36):

> "The pseudo-conservative follows the lead of the demagogues, with a frenzy of unrestrained attacks on public policy and a minimal offering of constructive alternative proposals. Regarding the public debate as meaningless, the totalitarian demagogue is only present to evangelize his own ideology—never to learn. Tearing and rendering public confidence in the Constitution (and Bill of Rights!) where he can, his style is conspiracy, and his stench is disloyalty. The pseudo-conservative is the 'patsy,' the fellow traveler to the fascists: the genuine conservative is their mortal enemy."

Subsequently, there is a reference to persons (in general) who "are carefully laying the basis for a *coup d'etat* in their fascist-type literature (p. 43).

The organization most frequently cited as being in the totalitarian fascist camp is the John Birch Society, which is said to be "a disciplined party of pseudo-conservatives and fascists" (p. 37), and to show "striking parallels to the Nazi party" (p. 45).

Two of the four chapters of the book are devoted to the description of the identifying marks of extremist groups. Chapter II is entitled "How to Identify Totalitarian Movements" (pp. 59–92). This chapter starts out with the statement:

> ". . . but the malaise with which we are dealing is specific, objectively definable. That problem is the rise of disciplined conspiratorial movements whose goal is power and whose style of politics is contrary to the rule of liberty under law which republican constitutions and due process of law are designed to achieve."

Littell apparently believed it important that the extremist right-wing groups he was denouncing be labeled as "fascist" in order to prevent any misunderstanding as to their true nature. Thus the following passage appears (p. 60):

> "So too with the term 'radical right': the phrase is preferred by some writers who do not want to apply the precise rubric, which is fascism. 'Fascism' was the term chosen by the oldest movements of right-wing takeover, when Mussolini and his thugs betrayed the legitimate government of Italy in 1922, terrorized and destroyed all dissenting groups, and established the model followed with adaptations by Hitler, Franco, Peron, and a host of subsequent lesser lights. 'Fascism' is the term to apply to parallel movements and systems today, even though specialists note technical differences between Italian fascism, German Nazism, Spanish Falangism, and other radical right movements."

The book goes on to state that, by means of Littell's analytical method, "totalitarian conspiracies and actions can be defined by law as precisely as murder, arson and rape and . . . such definition is overdue" (p. 71). The book states that by this method it is possible to identify "organizations and parties and systems which have opted out of the life of dialogue, which are not in good faith in public meetings, and have in fact drawn the knife against all who stand in the way of their drive for power" (pp. 64–65). On the subject of fellow traveling, the book has this to say (p. 68):

> "On the practical side it is now perfectly possible to distinguish honest liberalism from fellow-traveling with the Communists, and honest conservatism from fellow-traveling with fascist-type movements. The failure to make such distinction, scientifically as possible as the distinction between measles and scarlet fever, is the major plague afflicting both the Republican and Democratic parties in the United States."

Littell describes fifteen "theoretical" identifying marks of totalitarianism (pp.

72–91) and sixteen "practical" characteristics of totalitarianism (pp. 95–111). I will only mention a few of these as illustrations of what Buckley is connected with when he is labeled as a fellow traveler of the fascist brand of totalitarianism.

Littell starts each list with anti-Semitism (pp. 72, 95). Under the heading "The Politics of Polarization", Littell states that totalitarians are "destructive of the rules of the dialogue and of the constitutional order itself", and intend "not orderly change but transfer of power by reversion to the law of the knife" (pp. 74–75). Under the heading of "The Cult of Violence" there is the statement that "the praise of violence toward the opposition is fundamental", and there is a description of the alleged attempts by the John Birch Society and its "fronts" to support lawless and brutal action by police—particularly against civil rights demonstrators. In this same section of the book, there is also a description of the use of the "big lie" against "faithful stewards of governmental office who resist totalitarian measures and movements". It is further stated (p. 82):

> "The Dial-a-Lie telephone program of the John Birch Society, as well as the over 10,000 weekly radio programs of the agents of the radical right, are forms of sadism and barely subdued violence."

It is said that "amateur sleuths" are developed and that "both Communist and fascist organizations keep files on enemy persons—using the data for character assassination now and liquidation later" (p. 83). It is further stated that "amateur agents" have created "a new style of treason in our time," specializing in the "fifth column," which destroys constitutional order and trust, and which develops "large networks of espionage, subversion and conspiracy" (p. 83). In this connection, the book refers to an organization known as the Church League of America, and states that this organization boasts that its files contain the largest volume of negative information on individuals outside the FBI (p. 83).

The book states that in totalitarian politics, "Symbols of sadism and violence are approved" (p. 108). It is said that "vulgar and vicious forms of sedition are encouraged by disloyal public officials, with unpunished arson and murder the results" (p. 108). The book asserts that totalitarian supporters revert to primitive "justice" in the form of mob demonstrations, mob violence, and the takeover of legitimate organizations by various pressure tactics (pp. 108–9).

The ultimate recommendation is that totalitarian groups in America be exposed as conspiratorial and subversive and be outlawed (p. 113).

In Appendix 2 at the end of the book there is the following definition of "fellow traveler" (p. 131):

> " 'Fellow-traveling' is to follow a 'line' fixed by someone else in another place, while pretending to integrity—and independence of discussion and decision." [4]

In Appendix 2 Littell lists a number of "Extremist Newspapers and Magazines". None are classified under the specific heading of "fascist". But a number of publications are listed under the headings of "Racist" and "Radical Right". Some of these are *The Cross and the Flag*, published by the Christian Nationalist Crusade; *American Opinion*, published by the John Birch Society; *Christian Crusade*, published by Billy James Hargis; the *Dan Smoot Report;*

4. Littell points to the fact that on the next page there is a reference to a type of persons called "innocents"—persons who are said to have been "taken in" by extremist groups and to have been used unwittingly. The idea is that fellow travelers can include not only those who intentionally deceive, but also those who are innocently used as messengers for extremist causes. However, Littell in his testimony admitted that he did not make clear in his book that fellow travelers include "innocents". He would do so, if he issued a revised edition.

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and *Life Line*, published by the late H. L. Hunt. It should be noted that Buckley's magazine *National Review* is not included in any of the listed publications in Appendix 2.

In connection with the meaning of the alleged libelous passage relating to Buckley, attention should be given to the comparison that is drawn between Buckley and Westbrook Pegler. The statement is (p. 51):

> "Like Westbrook Pegler, who lied day after day in his column about Quentin Reynolds and goaded him into a lawsuit, Buckley could be taken to court by any one of several people who had enough money to hire competent legal counsel and nothing else to do. Reynolds won his suit, of course, but it took all of his time and resources for most of three years, and he died shortly thereafter."

The libel action of Quentin Reynolds against Westbrook Pegler was a case of unusual notoriety. It was described in detail in Louis Nizer's best-selling book *My Life in Court*, first published in 1963 and reprinted thereafter. Although Littell does not recall reading the Nizer book, he recalls reading a description of the case in another book.

Pegler had made a scurrilous personal attack upon Reynolds, accusing him of cowardice as a war correspondent, of having shared the profits of fraudulent military contractors, of having proposed to the widow of Heywood Broun at her husband's funeral, of engaging in improper sexual practices, and so forth.

Reynolds won his libel action against Pegler, and certain newspaper publishers. Reynolds v. Pegler, 223 F.2d 429, 431 (2d Cir. 1955).

Summary of Interpretation

The alleged libelous passage regarding Buckley, taken in the context of other relevant portions of *Wild Tongues*, makes accusations against Buckley of a profoundly serious nature. It not only labels him as the outstanding representative in this country of the function of fascist fellow traveler, but it spells out in considerable detail the specific evils with which such a fellow traveler is associated. These include disloyalty to the government of this country, advocacy of conspiratorial overthrow of the government, devotion to violence and disruptive tactics for the subversion of our institutions, including churches.

Littell appears to argue that, even though Buckley is labeled as a fellow traveler of the extremist movements being denounced, it does not follow that the book connects Buckley with each and every evil described in the book. But the evils I refer to here are emphasized repeatedly through the book as being the basic identifying characteristics of fascism. I believe it is inevitable that a reader of the book would take it to mean that Buckley—as the alleged outstanding fellow traveler of fascism in America—subscribes to these basic evil tenets.

In addition, the book would convey to an ordinary reader the message that Buckley is deliberately using his prominent journalistic position to convey fascist views under the guise of responsible conservatism. This is the inevitable effect of the passages charging that a fellow traveler functions "as a deceiver" (p. 50), "while pretending to integrity" (p. 131). Finally, Buckley is accused of engaging in the type of libelous journalism practiced by Westbrook Pegler against Quentin Reynolds.

Buckley's Evidence Regarding Alleged Libel

Buckley testified at the trial that his career has been mainly devoted to making a case for a conservative dissenting point of view on social and political issues. He favors the private over the public sector in the economy. He views the communist threat from abroad as the principal danger to world peace.

Buckley testified as to the meaning of "fascism" and "radical right". The characteristics of fascism, in its full development are: Absolute power of the state apparatus and subordination of the

judicial and legislative branches to the executive; suppression of the electoral process and dissenting parties; unrestricted use of the military and police power in disregard of individual civil rights; use of terror and brute force as weapons of suppression; anti-Semitism or other forms of racism; absence of any meaningful political dialogue.

In his testimony at the trial, Buckley gave the Ku Klux Klan as an example of a fascist-type organization in America, because it favors terrorism and repudiates individual rights. Buckley also characterized the group known as "Minutemen" as fascistic, since they purported to be arming themselves, although this group clearly has no actual program for taking over the country.

Buckley testified that the term "fascist" has a different meaning from "radical right". Buckley defined the radical right as a congeries of highly dissatisfied Americans, with irresponsible views, but lacking in the intent to use brute force to achieve their ends. Buckley would classify persons such as Carl McIntire, Billy James Hargis, and the late H. L. Hunt as radical rightists, but not as fascists. Buckley would similarly classify the John Birch Society.

Buckley testified that he has been intent upon maintaining a distinction between himself as a "responsible conservative" and persons associated with the fascist or "irresponsible" right. According to Buckley this distinction is a crucial one for his career.

At the trial, Buckley testified about his condemnation of the John Birch Society as illustrative of this distinction. Apparently, in the early 1960's after the John Birch Society first surfaced, Buckley was highly critical of the society's leader, Robert Welch, because of his thesis that President Eisenhower and other American leaders were agents of Communism. Buckley considered such views delusions. However, the John Birch Society indicated that its members could accept or reject these views of Welch, and Buckley for a time refrained from condemnation of the society as a whole. However, in 1965 Buckley decided upon an all-out condemnation of the John Birch Society, and an entire issue of *National Review* in October 1965 was devoted to a sharp attack upon the society. In his trial testimony Buckley referred to the views of the John Birch Society as "lunacies".

Buckley also testified that at one point *National Review* ran an eight-page expose regarding a proto-fascist group called the Liberty Lobby.

Another example of Buckley's conflict with a radical right related to one Kent Courtney, whose group Buckley labeled at one time as "kooks", and who reciprocated with sharp attacks on Buckley.

Buckley testified that for fifteen years he has been subject to denunciation by various members of the "irresponsible right".

Buckley testified that his syndicated column and *National Review* do not pick up items from fascist or radical right journals in order to circulate them. On the other hand, *National Review* has referred to such items occasionally for the purpose of denouncing them. For instance, Buckley published two articles criticizing *Playboy* magazine for giving what Buckley considered undue attention to George Lincoln Rockwell and his American Nazi party.

Buckley specifically denied each of the allegations of the "Fellow Traveler" passage of *Wild Tongues*.

Allard Lowenstein, a former Democratic Congressman, a former chairman of the Americans for Democratic Action, and a present member of the Democratic National Committee, testified for Buckley. Lowenstein testified that Buckley cannot be fairly described as either a fascist or a radical rightist or a fellow traveler of either. Lowenstein testified that it is "outrageous" to say that Buckley picks up materials from openly fascist journals. According to Lowenstein, Buckley has the reputation of a sophisticated journalist, not giv-

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en to irresponsible personal attacks on individuals.

Warren Steibel, producer of Buckley's television program *Firing Line*, testified that if the characterizations of Buckley contained in *Wild Tongues* were to gain credence, the program could not remain on the air. The Ford Foundation would not sponsor it. Harry Elmlark, editor of Buckley's syndicated column *On the Right*, testified that, if Buckley acquired a reputation in accordance with the description in *Wild Tongues*, this would be the death of the column. Both Steibel and Elmlark stated that the accusations against Buckley in *Wild Tongues* are in fact false.

Littell's Evidence Regarding Alleged Libel

The authorities relating to the law of libel will be discussed later in this opinion, including the decisions regarding the First Amendment limitations on a libel action in the case of a public figure. However, I wish to summarize briefly at this point the basic rule regarding a public figure's burden of proof in a libel action.

[5, 6] A public figure such as Buckley cannot recover in a libel action unless he proves with convincing clarity that the defendant knew that the libelous statement was false, or made the statement with reckless disregard of whether it was true or false. New York Times Co. v. Sullivan, 376 U.S. 254, 279–80, 285–86, 84 S.Ct. 710, 11 L.Ed. 686 (1964); Gertz v. Robert Welch, Inc., 418 U.S. 323, 336, 342, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). The reckless disregard requirement has been defined to mean that the defendant must be shown to have had an awareness of probable falsity. St. Amant v. Thompson, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968). It is in the context of these basic rules that I am now setting forth a summary of the evidence about what Littell believed and did not believe regarding the statements made about Buckley in *Wild Tongues*.

Littell did not subscribe to *National Review* or read Buckley's column *On the Right* regularly, but read *National Review* and the column from time to time. His testimony is that he "spent a good many hours all in all reading into *National Review*" before the time he wrote *Wild Tongues*. Buckley was an occasional subject of discussion with Littell's colleagues and in seminars which Littell conducted. Certain books used in these seminars contained references to Buckley.

Littell testified that in about 1961 or 1962 he commenced keeping a file on Buckley. Littell maintained personal journals in which he wrote down items of interest, including occasional notes regarding Buckley.

Littell did no research or checking in his files or elsewhere in connection with the writing of the passage about Buckley in *Wild Tongues*, except for producing the materials to Macmillan relating to his personal disagreement with Buckley in 1967–68. Littell has testified that he basically relied on memory and impressions in saying what he did about Buckley.

In connection with the trial of this action, Littell was asked to produce his file about Buckley, as well as the notes in his journals relating to Buckley and any other materials which might have formed a basis for the statements about Buckley in *Wild Tongues*. Littell produced some materials from his journals and files, but could not locate his complete collection. In addition, a large number of items from *National Review* and other publications were produced, which did not come from Littell's original files, but were obtained by Littell and his wife through research done in libraries and elsewhere in preparation for the trial of this action. Littell testified that he may not have read all of these items, and that there may have been other items not produced that he did read. But the items were produced as samples of the type of information which Littell says came to his attention over the years.

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[7] It is necessary to bear in mind that it is not Littell's burden under New York Times Co. v. Sullivan, *supra*, and the other relevant decisions, to show that he made an investigation regarding his statements or that he had a documentary basis for his statements. However, at the trial of this action, Littell testified in great detail regarding what he intended to say about Buckley in *Wild Tongues*, about his actual beliefs regarding Buckley, and the sources of those beliefs. This testimony, along with all the other relevant evidence, must be considered in determining whether *Buckley* has ultimately sustained his burden of proof.

> "There is no doubt that evidence of negligence, of motive and of intent may be adduced for the purpose of establishing, by cumulation and by appropriate inferences, the fact of a defendant's recklessness or of his knowledge of falsity." Goldwater v. Ginzburg, 414 F.2d 324, 342 (2d Cir. 1969), cert. denied, 396 U.S. 1049, 90 S.Ct. 701, 24 L.Ed.2d 695 (1970).

At the risk of repetition, I feel that it is necessary at this point to dwell again upon certain aspects of the meaning of the book. As already indicated, one of the basic purposes of the book was to help the reader to understand the distinction between a genuine conservative and a fascist or a fascist fellow traveler. Littell so testified, stating that "the whole basic purpose of the book was to make a basic distinction between honest conservatism, however hard-headed, and fascism; and honest liberalism, however idealistic, and Communism or fellow traveling with Communism".

In drawing this important distinction between the genuine conservative and the fascist or the fascist fellow traveler, Littell in *Wild Tongues* gives his extensive elaboration of the meaning and identifying characteristics of fascism—disloyalty to the government, advocacy of violence, disbelief in democratic institutions, desire for a totalitarian state, contempt for individual liberties, and so forth. I have already concluded that a normal reader would take the book to mean that Buckley—the alleged "outstanding" fascist fellow traveler in America—was knowingly associated with those basic purposes. Also, as indicated earlier, the book charges Buckley with disreputable journalistic practices—deliberately purveying fascist propaganda under the guise of responsible conservatism, and committing libels against individuals.

It now is evident from Littell's trial testimony that there are substantial differences between what the book states and what Littell in fact believed.

Littell admitted at the trial that he does not in fact believe that Buckley is a fascist, or a fellow traveler of fascism, or a fellow traveler of totalitarianism. He did not believe any of these things at the time he wrote *Wild Tongues*. He did not intend to say any of these things in *Wild Tongues*. What he does believe, and did believe when he wrote the book, is that Buckley was a fellow traveler of —or "in the orbit of"—the radical right.

On this point, the following testimony is illustrative. The court asked Littell about the matter of calling Buckley a fellow traveler of fascism.

> "Are you telling me you didn't mean to say that?
>
> THE WITNESS: No.
>
> THE COURT: You did not?
>
> THE WITNESS: Yes, I am telling you that.
>
> THE COURT: You did not mean to say that Mr. Buckley was a fellow traveler of the fascists or fascism, is that right?
>
> THE WITNESS: That is right.
>
> THE COURT: You would say that that is false, to say such a thing, would you?
>
> THE WITNESS: I certainly wouldn't say it that way."

Subsequently there was the following:

> "THE COURT: What is he a fellow traveler of?

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THE WITNESS: He is a fellow traveler of the radical right or the right wing."

Littell, in his testimony, conceded the correctness of Buckley's differentiation between fascism and the radical right, to the effect that the radical right consists of dissatisfied, highly conservative Americans, lacking, however, the malign characteristics of fascism.

Littell agreed that the distinction between fascism and the radical right is not a narrow distinction or a mere matter of semantics. He testified:

"Now, if you speak loosely or carelessly, as is sometimes done, you will end up with a right wing or a radical right way of thinking, a reference which doesn't make the necessary distinction and somebody will think, well, when you say radical right you mean fascism." [5]

Littell advanced a two-step proposition in his defense: First, that in *Wild Tongues*, he only intended to call Buckley a fellow traveler of the radical right; and second, that he had a good faith belief in Buckley being a fellow traveler of *this kind*, which was supported by numerous sources which he testified about.

Putting aside momentarily Littell's testimony about what he intended to say in the book, the above evidence leads to the inescapable conclusion that there is a sharp difference between what the book actually says and what Littell believed. As I have already found, the book plainly and emphatically calls Buckley a fellow traveler of fascism. Moreover, the book is careful to indicate that the specific evils described therein relate to fascism, and *not* to something less dangerous—such as the radical right. But Littell does not, and did not, believe that Buckley was a fascist, or a fellow traveler of fascism or totalitarianism.

[8, 9] This would seem to lead to the conclusion that this serious accusation against Buckley in *Wild Tongues* was made by Littell with knowledge of its falsity. But we must consider the contention, relied on by Littell, that he was acting in good faith, and had no knowledge of the falsity of the statement, because he did not intend to accuse Buckley of being a fellow traveler of fascism. On this point, I find Littell's testimony difficult to credit. It is hard to believe that words which have such a plain meaning were not intended by their author to have this meaning. At the very least, I must conclude that Littell was acting in reckless disregard of the truth when he used words which clearly spell fascism when he did not indeed believe they applied to Buckley. An author cannot ". . . automatically insure a favorable verdict by testifying that he published with a belief that the statements were true." St. Amant v. Thompson, 390 U.S. 727, 732, 88 S.Ct. 1323, 1326, 20 L.Ed.2d 262 (1968).

Regarding the accusation in *Wild Tongues* that Buckley "functions as a deceiver", Littell testified that he did not believe that Buckley intentionally or deliberately acted in this way, but did so innocently. Littell testified:

"I am not accusing Mr. Buckley of deliberately deceiving anybody."

Still later, there was the following colloquy:

"THE COURT: But you would not have wanted to write expressly the statement, Mr. Buckley functioned as

5. It will be recalled that at p. 60 of *Wild Tongues* there is the statement:

"So too with the term 'radical right': the phrase is preferred by some writers who do not want to apply the precise rubric, which is fascism."

The position taken in the book is that there are certain specific evils, which should be clearly understood as fascism. Buckley was labeled in the book as a fellow traveler of fascism.

In his trial testimony, Littell agreed that there is indeed a political grouping, distinct from fascism, known as the radical right, and Littell says that his actual belief is, and was, that Buckley is a fellow traveler of the radical right.

But *Wild Tongues*, by its own declaration is dealing with fascism, not the radical right; and the elaborately described characteristics of conspiratorial tactics, etc. clearly relate to fascism.

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a deceiver intentionally for the John Birch Society or any of those other groups you referred to, right?

"THE WITNESS: I agree."

Littell went so far as to testify that when he said in the alleged libelous passage that a fellow traveler "functions as a deceiver", he was simply speaking in general terms, not intending to refer to Buckley in particular. Moreover, with respect to his statement in Appendix 2 that a fellow traveler follows a line fixed by someone else "while pretending to integrity"—Littell testified that this was "an infelicitous phrase".

Littell similarly retreated, at the trial, from the accusation in the book that Buckley was guilty of libelous journalistic practices in the manner of Westbrook Pegler. In the first place, Littell indicated that this serious charge was placed in the book almost by accident. Littell stated at the trial:

"And it was just by chance that I even threw that phrase in. I might just as well not have, but it just happened to come up as I was writing."

At another point, Littell testified:

"I mean it is more accidental than we are treating it, you see."

Specifically with regard to the question of whether Littell believed that Buckley had engaged in the same kind of defamation for which Pegler was found liable Littell testified:

"THE COURT: As far as Buckley, let me get this straight. You did not believe that Buckley was leveling against these people personal remarks or attacks about their sexual habits, their morals, their business ethics, their cowardice, anything like that, did you?

THE WITNESS: I don't know of any case where he has done such a thing.

THE COURT: You did not mean to say that in this book?

THE WITNESS: No.

THE COURT: And you didn't know of any such case, right?

THE WITNESS: Right."

[10] It would appear clear that, with respect to the allegations in *Wild Tongues* that "Buckley functions as a deceiver" and engages in libelous personal attacks on individuals, there are sharp differences between what the book says and what Littell actually believed. On the question of Littell's good faith, based on his contention that he did not mean to actually make these harsh accusations, again I find it difficult to credit Littell's testimony. And again, I must conclude that Littell was at least acting in reckless disregard of the truth when he made the accusations against Buckley contained in *Wild Tongues*.

What has just been said is nearly sufficient in and of itself to demonstrate the falsity of Littell in this action. However, for the sake of completeness, it is necessary to describe in some detail other features of the evidence.

Additional Evidence Regarding Buckley's Political Orientation

In his testimony at the trial, Littell sought to explain the sources of his belief as to Buckley's political orientation.

Littell sought to show that Buckley had associated himself with organizations in which John Birch Society members and other radical right supporters were involved. Littell referred to the fact that at one time Buckley was listed as a Contributing Editor of *The American Mercury*. Littell produced an article from a 1953 issue of this magazine by J. B. Matthews entitled "Reds and Our Churches", in which Matthews charged that substantial numbers of Protestant clergymen were supporting the Communist apparatus.

Littell also referred to the fact that Buckley was listed as a participant in *The Campaign for the 48 States*, a group which apparently existed from 1955 to 1959, and which favored certain proposed constitutional amendments to limit the power of the federal government. Littell's information is that 16 out of about 100 members of this group

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were subsequently affiliated with the John Birch Society.

Buckley was also listed as a member of *The Committee Against Summit Entanglements*, which was formed in 1959 to protest the visit of Khrushchev to the United States. According to Littell, most of the members were later identified with the John Birch Society.

Littell refers to the fact that in 1959 Buckley appeared at a rally in Chicago with Robert Welch of the John Birch Society and with another alleged prominent member of the radical right, Kent Courtney.

Buckley was also an organizer of the *Committee for the Monroe Doctrine*, which was formed in 1962 to protest President Kennedy's handling of the Cuban missile crisis. Littell asserts that about 25 out of 160 members were connected with the John Birch Society.

Littell does not even contend that this evidence shows that Buckley was a fellow traveler of fascism, as defined in *Wild Tongues*. Littell argues that the evidence *does* show that Buckley was in the orbit of the radical right. However, even on this point, Littell was aware of the following circumstances.

Buckley broke with *The American Mercury* in 1955, and later took the position that no one connected with *The American Mercury* could appear on the masthead of *National Review*.

With respect to any possible alliance between Buckley and Kent Courtney, events in 1965 clearly showed that it no longer existed, if it ever had. At this time Courtney was attacking Buckley as "sophomoric", and Buckley was charging that Courtney and his followers were "kooks".[6]

With regard to any claimed association with Robert Welch or the John Birch Society, it is clear that Buckley was never a member of the Society, nor does *Wild Tongues* make any accusation to this effect. As far as Littell thinking that Buckley was a sympathizer of the John Birch Society, Littell read the *National Review* item of November 19, 1963, in which Buckley denounced Welch as a believer "in a cluster of political unrealities". In this article, however, Buckley stated that he had considerable admiration for the majority of those members of the John Birch Society whom Buckley had met or corresponded with—judging them as individuals, not as members of the Society. Littell also knew that by 1965 Buckley had gone much farther in his repudiation of the John Birch Society. Littell read the October 19, 1965 issue of *National Review*, containing a sharp critique by Buckley both of the leadership of the John Birch Society and the activities of its members. Among the comments were:

> "One continues to wonder how it is that the membership of the John Birch Society tolerates such paranoid and unpatriotic drivel."

This issue of *National Review* contained an article by Frank S. Meyer, which concluded with the statement:

> "However worthy the original motivations of those who have joined it and who apologize for it, it is time for them to recognize that the John Birch Society is rapidly losing whatever it had in common with patriotism or conservatism—and to do so before their own minds become warped by adherence to its unrolling psychosis of conspiracy."

It should be remembered that in *Wild Tongues* Littell charges that the John Birch Society is a fascist conspiracy. Littell reiterated this position at the trial. Also, at the trial Littell admitted that he did not really regard Buckley as a fascist or fascist fellow traveler. It is clear that Littell knew far more about the differences between

6. Information about Buckley's break with *The American Mercury* and Buckley's disagreement with Courtney are contained in a biographical summary of Buckley which Littell had read prior to writing *Wild Tongues*.

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Buckley and the John Birch Society than he revealed in *Wild Tongues*.

At the trial of this action, Littell referred to some thirty items from *National Review* and Buckley's column *On the Right* as indicating that Buckley was a fellow traveler of the radical right. These items span the period from 1957 until the time of the publication of *Wild Tongues*. In general, Littell contends that these articles illustrate a coincidence of views between Buckley and the radical right, and also illustrate the fact that *National Review* was willing to accept articles from persons connected with the radical right.

For instance, Littell refers to an article in the October 5, 1957 *National Review* by Revilo Oliver, who later became a member of the board of the John Birch Society. Littell refers to an article in the June 19, 1962 *National Review* by Jacques Soustelle. Littell testified that Soustelle later became a leader of a fascist faction in French Algeria. Littell indicated that *National Review* had printed articles "dozens of times" over a five-year period featuring people later exposed as genuine fascists.

However, the articles by Oliver and Soustelle are the only specific examples produced by Littell. Also, the contents of the articles are anything but fascist. The Oliver piece contains a harmless discussion of the slim chances of political conservatives in America. The Soustelle article protests against the possible abandonment by France of Algeria's French population.

Among the *National Review* articles which Littell points to as illustrating Buckley's right-wing orientation are the following:

June 29, 1957 (criticism of Supreme Court decision in Brown v. Board of Education);

May 8, 1962 (criticism of Ralph Bunche for alleged distortion of the activities of the Katanga Freedom Fighters);

May 31, 1966 (criticism of a proposed civil rights law which would cover the sale or rental of private houses).

In addition, Littell has produced photocopies of the covers of certain issues of *National Review*, showing that articles were being carried on the following subjects:

April 5, 1966 (favoring the police on the subject of proposed Civilian Review Boards);

May 16, 1967 (regarding Rhodesian Prime Minister Ian D. Smith, and calling him "Rhodesia's George Washington").

Unfortunately the articles themselves were not introduced into evidence by either party.

It would serve no useful purpose to set forth a detailed analysis of all these materials. However, I have reviewed them carefully. Far from supporting any conclusion that Buckley sympathizes with fascism, or with the conspiratorial, totalitarian methods and goals of fascism as outlined in *Wild Tongues*, these materials positively rebut any such conclusion.

Littell refers to three books as supporting his thesis that Buckley is a fellow traveler of the radical right. These are: *The Extremists*, by Mark Sherwin, published in 1963; *Danger on the Right*, by Arnold Forster and Benjamin R. Epstein, published in 1964; and *The Farther Shores of Politics*, by George Thayer, published in 1967. Littell testified that *Danger on the Right* was perhaps his most important source. Indeed, *Danger on the Right* has an entire chapter on Buckley and *National Review*. This book states (p. 241):

". . . Buckley is one of the leading fellow travelers of the American Radical Right."

Danger on the Right attempts to develop the thesis that Buckley allows himself to be linked with persons and organizations on the radical right, including the John Birch Society, and has views often

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coinciding with such persons and organizations.

It should be noted that *Danger on the Right* was written before Buckley's thoroughgoing denunciation of the John Birch Society in 1965, as Littell well knew. Moreover, at its worst, *Danger on the Right* falls far short of linking Buckley to fascism, as is done in *Wild Tongues*. The same is true of the other two books referred to.

Littell testified that he had increasing suspicions about whether Buckley was connected with the radical right (although not fascism), which developed over a period of several years before the writing of *Wild Tongues*. Yet, it is interesting to note Littell's testimony in response to questioning about whether he had made any public comments during these years connecting Buckley with the radical right. Littell stated that the bishops of his church set up a committee on extremism in 1964 and appointed Littell chairman, and that from 1964 to 1969 he lectured frequently on the dangers of extremism throughout the country. Sometimes a question would come up about where Buckley stood in the political spectrum. Littell testified:

> "Q Over that five-year period when Buckley's name came up from time to time in these lectures did you ever describe him as a fellow traveler of the radical right?
>
> A I don't think that I ever did."

Littell testified that his "basic attack" during this time was on the John Birch Society and on its various fronts, and on people "who clearly were following the line", such as Billy James Hargis and Edgar Bundy.

Littell testified that at some point his misgivings about Buckley's political complexion led him to discuss the matter with two persons who were mutual friends of himself and Buckley—Joseph Uihlien and Will Herberg. Littell cannot clearly remember the times of these conversations, but believes that they were before the fall of 1967, when Littell's correspondence with Buckley started. According to Littell, he told both Uihlien and Herberg that he thought Buckley was in the orbit of the radical right, or "playing footsie" with the radical right. Both Uihlien and Herberg told Littell that he was mistaken. Herberg stated that Buckley was trying to give a new birth to conservatism in America. They both urged Littell to check with Buckley.

According to Littell, he did write to Buckley. The correspondence which he has identified in this regard is the same correspondence involved in the dispute which Littell had with Buckley in late 1967 and early 1968, which has been described earlier in this opinion. Certain statements of Littell's in his letters to Buckley are of interest on the subject of whether or not Littell actually believed that Buckley was a fellow traveler of fascism or the radical right.

In a letter of November 21, 1967 to Buckley, Littell stated:

> "I appreciated your recent newspaper column attempting again to distinguish between honest conservatism and fascist activities.
>
> * * * * * *
>
> "Since I appreciate some of the positions you have taken, and especially your effort to maintain an honest and non-fascist conservatism, I think it appropriate to protest that I was misinterpreted in your magazine and that you must remember that one of the marks of a real conservative is that he checks his sources."

In a letter dated January 14, 1968 to Buckley, Littell stated:

> "I have often taken pains in response to questions following public lectures to distinguish your work from that of the fascists, and I think that if you are truly a conservative you will agree that I am entitled to the same courtesies."

Finally, in a letter dated February 14, 1968 to Buckley, Littell stated:

> "I have not received an answer to my letter to you under date of Janu-

ary 14th, in which I protested the misuse of my paper prepared for the NEA Conference last summer in the Twin Cities, and pointed out to you that honest conservatives and honest liberals should stand together against the Extremist elements. I also indicated that I have carefully avoided attacking you in public because I believe that you belong to the former category."

Littell now takes the position that he was not completely sincere in these rather complimentary statements, but that he was simply being diplomatic. However, it is my view that these statements do indeed have significance in showing Littell's belief about Buckley at that time. They are consistent with his admission that in five years of public lectures he never stated that Buckley was a fellow traveler of the radical right.

Littell testified that the turning point in his decision that Buckley belonged in the orbit of the radical right came as a result of Buckley's column of February 10, 1968, referred to earlier in this opinion, entitled "Who Are the Totalitarians?" It would serve no useful purpose to analyze this particular problem in any further detail. Whether or not "Who Are the Totalitarians?" would justify anybody in linking Buckley to the radical right is a subject which could be debated. But for the purposes of the present case, it is sufficient to say that there is nothing whatever in this article which comes close to indicating *fascist* sympathies on the part of Buckley. Indeed, no such contention is made by Littell.

Additional Evidence Regarding Buckley Picking Up Items From "Openly Fascist Journals"

I have already described Littell's testimony that he did not believe that Buckley was *intentionally* using his journalistic position to purvey fascist doctrine, although this may have occurred "innocently". Moreover, I have already held that this is contrary to what the book actually stated. I will now refer to certain additional evidence on this subject.

Littell testified that over the years he had learned, either through his own reading or through information from students and others, of ten or a dozen instances where Buckley's writing "showed a most marvelous parallel to what appeared in the other radical right journals."

When asked to list what he was referring to in *Wild Tongues* as "openly fascist journals", Littell specified the John Birch Society's *Bulletin*, Kent Courtney's *Independent American*, Gerald L. K. Smith's *The Cross and the Flag*, H. L. Hunt's *Life Line*, Frank Capell's *Herald of Freedom*, and Billy James Hargis' *Churchmanship and Politics*. After indications of some doubt, Littell also included Edgar Bundy's *News and Views*.

Although Littell testified that he did considerable research prior to the trial, he was only able to provide two specific instances of coincidence between Buckley's writings and materials in the alleged fascist journals. Both of these instances related to criticisms of Littell's Institute for American Democracy ("IAD").

The IAD was publicly announced on November 18, 1966. The John Birch Society *Bulletin* made an attack upon the IAD on December 10, 1966. Frank Capell's *Herald of Freedom* attacked the IAD in the issue of December 30, 1966. One month later, on January 10, 1967, a criticism of the IAD appeared in *National Review*. In the January 1967 issue of Bundy's *News and Views* there was also an attack upon the IAD. Other items appeared in Richard Cotten's *Conservative Viewpoint* of January 12, 1967, and in a publication issued by Billy James Hargis in early 1967.

It also appears that in the June 10, 1968 issue of *News and Views* there was a further attack on the IAD—and on Steve Allen. Buckley's column *On the Right* for July 25, 1968 contained a simi-

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lar criticism. Both of these items apparently resulted from Steve Allen's appeal for funds for the IAD. Finally, the November 1968 issue of *News and Views* again attacked the IAD. The latter item was expressly cited, with approval, in the November 1968 issue of *National Review*.

[11] The conclusion I reach from the evidence on this subject is that Littell had an honest belief that there were instances where items of information and points of view were written about by Buckley and by the right-wing publications Littell referred to. Whether the latter publications could reasonably be classified as "fascist" is a question which I am not prepared to resolve on the present record, and do not need to resolve. The main point is that *Wild Tongues* accuses Buckley of deliberately acting as a deceiver in the purveying of fascist material. This accusation materially exceeded anything which Littell honestly believed.

Additional Evidence Regarding the Comparison with Westbrook Pegler

I must return at this point to the following passage in *Wild Tongues* (p. 51):

> "Like Westbrook Pegler, who lied day after day in his column about Quentin Reynolds and goaded him into a lawsuit, Buckley could be taken to court by any one of several people who had enough money to hire competent legal counsel and nothing else to do. Reynolds won his suit, of course, but it took all of his time and resources for most of three years, and he died shortly thereafter."

One question explored at the trial was whether Littell knew what it was that Westbrook Pegler had done which constituted the basis for this alleged comparison. Littell testified that he had read a description of the Reynolds v. Pegler libel action shortly before writing *Wild Tongues*. Littell admitted that it would be a reasonable assumption that he knew the nature of Pegler's lies about Reynolds when he wrote *Wild Tongues*. However, later in his testimony Littell denied that he really had in mind the scope of what Pegler had done. Littell's basic position on this issue was that he was not in fact attempting to draw an actual comparison between Buckley and Pegler, or to say that Buckley lied about individuals in the way that Pegler had done.

Littell testified that what he meant to say was that Buckley misrepresented the *positions* of prominent persons such as Martin Luther King, Jr., the Kennedy brothers, and other prominent persons in politics and religion. What Littell had in mind was that Buckley "hounded" and "goaded" such people, rather than lying about them in any conventional sense.

Littell particularly objected to what he termed Buckley's attacks on Martin Luther King, Jr. Littell referred to a Buckley column of October 21, 1962, in which Buckley questioned the motivation of King, a renowned exponent of peaceable opposition to racial segregation, in seeking an interview with Ahmed Ben Bella, said by Buckley to be a confirmed, militant terrorist in Algeria. Littell also referred to Buckley's column of August 18, 1965 commenting on the Watts riot, and making a general denunciation of lawlessness. This column referred to "the anarchic teachings of the Mario Savios [the leftist student leader] and the Martin Luther Kings and their disciples". Finally, Littell referred to Buckley's column of April 10, 1968, commenting upon the assassination of King. This column expresses deep sorrow about King's death, speaking of it as martyrdom, but also notes that King was planning to flout the law at the time he was killed.

Nevertheless, when Littell was asked if he knew of any instances when Buckley actually lied about King, Littell responded that "lies are matters of fact", and he could recall no instances of such lies.

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Littell produced from Buckley's writings a number of other instances of sharp attacks upon individuals. For instance, there was an item in *National Review* of June 29, 1957 referring to A. J. Muste, Dorothy Day, and Stringfellow Barr as "pacifist fellow-travelers" with strong implications that they were allied with Communism or socialism. A. J. Muste and Dorothy Day were both religious leaders whom Littell greatly admired. Stringfellow Barr was president of St. John's College in Annapolis, Maryland.

A later example is a *National Review* item of December 27, 1966 in which it is said that Murray Kempton of the *New Republic* and *New York Post* "can't stand the F.B.I. because the F.B.I. can't stand Communists". Littell testified that in his view this was "a slanderous reference".

There was reference at the trial to the libel action by Linus Pauling against *National Review*. Pauling charged that he had been libeled by two articles in the *National Review* of July 17, 1962 and September 25, 1962, in which Pauling had been called a Communist fellow-traveler. Littel was asked whether he relied on this situation in connection with the writing of *Wild Tongues*, and Littell said that he did not. He stated that "Pauling is not one of my favorite people". In any event, the action by Pauling was dismissed. It was held that, although the statements were libelous *per se*, Pauling had not sustained his burden of proving knowing falsity or reckless disregard for the truth. Pauling v. National Review, Inc., 49 Misc.2d 975, 269 N.Y.S.2d 11 (Sup.Ct.N.Y. County 1966), aff'd, 27 A.D.2d 903, 281 N.Y.S.2d 716 (1st Dept. 1967), aff'd, 22 N.Y.2d 818, 292 N.Y.S.2d 913, 239 N.E.2d 654 (1968).

There is no doubt that Littell in good faith had strong reservations about Buckley's journalistic tactics in denouncing various individuals. But the fact still remains that what was said in *Wild Tongues* exceeded by a substantial distance what Littell actually believed. The passage in *Wild Tongues* makes an emphatic reference to Westbrook Pegler and to how he "lied day after day in his column". Littell now concedes that he did not believe that Buckley engaged in this type of activity.

The following testimony sums it up:

"Q All right. Now, did you intend to say, referring to this Westbrook Pegler reference, did you mean to say that Mr. Buckley lied day after day about any individual?

A I don't think he did.

THE COURT: You what?

THE WITNESS: I don't think he did."

Littell now concedes that what he said in *Wild Tongues* on this point was "infelicitous".

Conclusion Regarding Littell's Belief

For the reasons set forth above, I find that certain statements in *Wild Tongues* regarding Buckley were made by Littell with knowledge of their falsity, or in reckless disregard of whether they were true or false, and that this has been demonstrated with convincing clarity. The statements I am referring to are, of course, those which I have discussed—*i. e.*, that Buckley is a fellow traveler of fascism, as these terms are defined in *Wild Tongues;* that Buckley acts as a deceiver and uses his journalistic position to spread materials from openly fascist journals; and that Buckley engages in libelous journalism against individuals.

[12, 13] There are certain other statements in the "Fellow Traveler" passage of *Wild Tongues* which Buckley contends are false and exaggerated. These include the reference to Buckley's book *God and Man at Yale* being condemned by alumni and others, and the statement that Buckley has been caught at misquotation. In my view, such statements do not in and of themselves constitute libelous material. Nor would a discussion of these points add anything of substance to what has already been

said about the really serious parts of the "Fellow Traveler" passage.

The Law of Libel

It is conceded that the state law of libel of New York governs this case, except to the extent that it is modified or limited by federal constitutional standards.

[14-16] Under New York law, a writing is libelous *per se* if it tends to expose a person to hatred, contempt or aversion, or to induce an evil opinion of him in the community. Mencher v. Chelsey, 297 N.Y. 94, 100, 75 N.E.2d 257 (1947). A writing is also libelous *per se* if it tends to injure a person in his professional capacity. November v. Time, Inc., 13 N.Y.2d 175, 244 N.Y.S.2d 809, 194 N.E.2d 126 (1963). The rules regarding damages will be discussed later in this opinion, but it should be said at this point that the basic effect of holding a writing to be libelous *per se* is that a judgment may be had without proof of "special damages". The Supreme Court has recently announced certain First Amendment limitations on libel damages. Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). To the extent relevant, this subject will be discussed later in this opinion.

Our attention has been called to no case which specifically holds that it is libelous to call a person a fascist or a fascist fellow traveler. However, there are cases in New York holding that it is libelous *per se* to accuse a person of being a Communist, a Communist sympathizer, or a fellow traveler of Communism. Toomey v. Farley, 2 N.Y.2d 71, 156 N.Y.S.2d 840, 138 N.E.2d 221 (1956); Mencher v. Chelsey, 297 N.Y. 94 (1947); Pauling v. National Review, Inc., *supra*.

The court of appeals for this circuit has thus interpreted New York law. Grant v. Reader's Digest Ass'n., Inc., 151 F.2d 733 (2d Cir. 1945), cert. denied, 326 U.S. 797, 66 S.Ct. 492, 99 L. Ed. 485 (1946). In the latter case Judge Learned Hand stated, after discussing various New York decisions (151 F.2d at 735):

> "Being the last decision of the state courts, it is conclusive upon us, unless there is a difference between saying that a man is a Communist and saying that he is an agent for the Party or sympathizes with its objects and methods. Any difference is one of degree only: those who would take it ill of a lawyer that he was a member of the Party, might no doubt take it less so if he were only what is called a 'fellow-traveler'; but, since the basis for the reproach ordinarily lies in some supposed threat to our institutions, those who fear that threat are not likely to believe that it is limited to party members. Indeed, it is not uncommon for them to feel less concern at avowed propaganda than at what they regard as the insidious spread of the dreaded doctrines by those who only dally and coquette with them, and have not the courage openly to proclaim themselves."

[17] In my view, the rationale of these decisions dictates a holding that the "Fellow Traveler" passage in *Wild Tongues* is libelous *per se* as to Buckley. It goes without saying that fascism is almost uniformly regarded in this country as something odious and totally contrary to our way of life and institutions. The concepts of fascism and fascist fellow traveling are described in *Wild Tongues* in elaborate detail to indicate the variety of evils connected with them, considerable emphasis being placed on the threat of conspiracy and subversion. Moreover, there is no question that Buckley's professional capacity as a journalist is subjected to a scurrilous attack in *Wild Tongues*.

Application of First Amendment Decisions

It is well known that beginning with New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), the Supreme Court has enunciated certain limitations upon state libel

laws, in order to prevent undue infringement of the First Amendment right of free speech. A thorough discussion of the way the *New York Times Co. v. Sullivan* rule has been developed in the various Supreme Court decisions is set forth in Justice Powell's opinion for the majority of the Court in Gertz v. Robert Welch, Inc., 418 U.S. 323, 334-39, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974).

A "public figure" such as Buckley, in order to recover in a libel action, must prove with convincing clarity that the alleged libelous statement was made with knowledge of its falsity or with reckless disregard for the truth or falsity of the statement. On the basis of my analysis of the facts of this case, I have already held that Buckley has sustained his burden of proof in this regard as to the statements made about him by Littell in *Wild Tongues*.

[18, 19] There are certain points which require further discussion in dealing with the rules announced in the Supreme Court decisions. In the first place, I am acutely aware that the subject matter in *Wild Tongues* relates to political debate and that any restrictions upon such debate are looked upon with extreme caution. The Supreme Court in New York Times Co. v. Sullivan stated (376 U.S. at 270, 84 S.Ct. at 721):

> "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

However, the Supreme Court has made it clear that even in the area of political debate and discussion, there must be a recognition at some point of the interest of the individual in protecting his reputation against libelous falsehoods. This protection is accorded even to prominent public officials and other public figures, who have exposed themselves to the sharpest public scrutiny and criticism. The Supreme Court has stated in Garrison v. Louisiana, 379 U.S. 64, 75, 85 S.Ct. 209, 216, 13 L.Ed.2d 125 (1964):

> "Hence the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection."

See also Goldwater v. Ginzberg, 414 F.2d 324 (2d Cir. 1969), cert. denied, 396 U.S. 1049, 90 S.Ct. 701, 24 L.Ed.2d 695 (1970). It is clear that there is no absolute and unconditional privilege against libel in the realm of political discussion any more than in any other area. Gertz v. Robert Welch, Inc., 418 U.S. 323, 341, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974).

Another question requiring discussion is whether the passage in *Wild Tongues* about Buckley is nonactionable because it deals with opinion, rather than with matters of fact. A related question is raised by Littell's defense of "fair comment".[7]

The defense of fair comment under New York law has been described in Julian v. American Business Consultants, 2 N.Y.2d 1, 155 N.Y.S.2d 1, 137 N.E.2d 1 (1956), where the New York Court of Appeals affirmed a dismissal of a libel action, involving statements about plaintiff's affiliation with a Communist organization. The court stated (2 N.Y.2d at 9, 155 N.Y.S.2d at 9, 137 N.E.2d at 6):

> "Under the rule of fair comment even if the publication holds one up to public ridicule, contempt and reproach or prejudices one in his opportunity

7. Macmillan originally asserted two other defenses—privilege of reply and the theory that Buckley had already disclosed the defamatory material in his own publications. Littell has not pressed these defenses. In any event, there is no evidence to support them.

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to earn a living, nevertheless it is not actionable if facts form a reasonable basis of inference."

[20] The Supreme Court has provided the following formulation of the rule about fair comment, which would apply in a libel action by a public official or a public figure. The Court stated in New York Times Co. v. Sullivan, 376 U.S. 254, 292 n. 30, 84 S.Ct. 710, 732, 11 L.Ed.2d 686 (1964):

"Since the Fourteenth Amendment requires recognition of the conditional privilege for honest misstatements of fact, it follows that a defense of fair comment must be afforded for honest expression of opinion based upon privileged, as well as true, statements of fact. Both defenses are of course defeasible if the public official proves actual malice, . . ."

It is clear that when the Court speaks of "honest expression of opinion based upon privileged . . . statements of fact", the Court is speaking of opinions based upon facts "privileged" in the sense that there has not been proof of knowing falsity or reckless disregard for the truth, under the constitutional standard.

In considering the question of whether the statements in *Wild Tongues* about Buckley are protected opinions, it is necessary to bear in mind the following:

"Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas. But there is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues." Gertz v. Robert Welch, Inc., 418 U.S. at 339–40, 94 S.Ct. at 3007.

[21] The boundary line between "fact" and "opinion" is obviously not a precise one. To call someone a fascist fellow traveler is perhaps not as concrete a statement of fact as to say that someone committed a theft, or did some other similar deed. On the other hand, when Littell speaks of Buckley as a fellow traveler of fascism, indicating that he sympathizes with and promotes conspiracy and subversion, and when Littell accuses Buckley of deceptive and improper journalistic practices—we are surely dealing with questions of fact, and not merely ideas. To the extent that Littell's statements may represent conclusions or opinions, for the reasons I have discussed in detail, I must hold that they were not an "honest expression of opinion based upon privileged . . . statements of fact."

Another question to be dealt with is whether recovery should be denied on the theory that the language used by Littell about Buckley was mere "rhetoric" or "epithet". In Letter Carriers v. Austin, 418 U.S. 264, 94 S.Ct. 2770, 41 L.Ed.2d 745 (1974), the Supreme Court held that the New York Times Co. v. Sullivan standard was applicable under federal labor law to a particular type of labor controversy. The Court held that libel recovery was barred in a situation where the plaintiffs, who had refused to join a union, were called "scabs" and where a well-known, and highly inflammatory, piece of trade union literature by Jack London had been circulated in order to define what a scab was. The Court held that there was no reckless or knowing falsehood since the application of the word scab to plaintiffs was literally true, under a dictionary definition. Moreover, the Court held that the mere use of undefined slogans, or the use of words in a loose figurative sense, would not be actionable in the arena of labor debate. The Court stated (418 U.S. at 284, 94 S.Ct. at 2781):

"As the Court said long before *Linn*, in reversing a state court injunction of union picketing, 'to use loose language or undefined slogans that are

part of the conventional give-and-take in our economic and political controversies—like "unfair" or "fascist"—is not to falsify facts.' Cafeteria Employees Local 302 v. Angelos, 320 U.S. 293, 295 [64 S.Ct. 126, 127, 88 L.Ed. 58] (1943). Such words were obviously used here in a loose, figurative sense to demonstrate the union's strong disagreement with the views of those workers who oppose unionization. Expression of such an opinion, even in the most pejorative terms, is protected under federal labor law."

In Greenbelt Cooperative Publishing Association v. Bresler, 398 U.S. 6, 90 S.Ct. 1537, 26 L.Ed.2d 6 (1970), the Court held that there could be no recovery based on the use of the word "blackmail" because it was clear from the context that the word was no more than "rhetorical hyperbole, a vigorous epithet" and did not indeed charge the crime of blackmail (398 U.S. at 14, 90 S.Ct. 1537).

[22] But the Supreme Court has clearly indicated that if rhetorical terms are used in such a way as to convey a false representation of fact, such words may be actionable. Letter Carriers v. Austin, 418 U.S. at 286, 94 S.Ct. 2770.

[23] For reasons which have already been amply described, this case involves far more than mere rhetoric or loose, undefined slogans or epithets. *Wild Tongues* makes the elaborately defined and deliberate misstatements of fact which are actionable.

One final point relates to the question of the degree of difference between what Littell believed and what he said in *Wild Tongues* about Buckley. It would seem clear that under certain circumstances, one might find a difference between an alleged libelous statement and the belief held by the maker of the statement which would be too narrow to justify a holding that the statement was made with knowing falsity or in reckless disregard of the truth. In a given case, the difference might involve a mere problem of semantics, an innocent exaggeration, or "errors of interpretation or judgment" as was the case in Time, Inc. v. Pape, 401 U.S. 279, 290, 91 S.Ct. 633, 28 L.Ed. 2d 45 (1971). I have analyzed the record in this case to determine whether we have such a situation here. My conclusion is definitely to the contrary. For the reasons which I have already described, it is my view that the statements about Buckley in *Wild Tongues*, taken in their totality, make accusations against Buckley which are substantially and importantly different from what Littell actually believed. To ignore the sinister connotations of fascism and fellow traveling as defined in *Wild Tongues*, and to ride over the distinction between those concepts and something substantially less dangerous such as the "radical right", would be to close our eyes to matters which the parties to this action, including Littell, agree have important significance.

Damages

[24] Under New York law, damages in a libel action fall into two categories —compensatory and punitive. Faulk v. Aware, Inc., 35 Misc.2d 302, 231 N.Y.S. 2d 270, 274 (Sup.Ct. N.Y.County 1962). Compensatory damages fall into three subcategories—nominal damages, general damages and special damages. Restatement of Torts §§ 620–623 (1938); 1 Harper and James, The Law of Torts, 468–73 (1956).

[25] The Supreme Court has held, in a case dealing with a person other than a public official or a public figure, that "presumed damages" (where no proof of actual injury is shown) and punitive damages, cannot be recovered in the absence of a showing of knowledge of falsity or reckless disregard for the truth, within the meaning of New York Times Co. v. Sullivan. Gertz v. Robert Welch Co., Inc., 418 U.S. 323, 349–50, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974).

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[26] However, in the case of a public figure, proof of knowing falsehood or reckless disregard for the truth is necessary in order to establish liability in a libel action. It follows that there is no constitutional bar in this situation to the recovery of presumed and punitive damages. See Curtis Publishing Co. v. Butts, 388 U.S. 130, 128, 159-61, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967); Goldwater v. Ginzburg, 414 F.2d 324, 340 (2d Cir. 1969), cert. denied, 396 U.S. 1049, 90 S.Ct. 918, 25 L.Ed.2d 103 (1970).

[27] With regard to compensatory damages, there has been no showing by Buckley of any actual injury occurring as a result of *Wild Tongues*. There is no evidence whatever to indicate any actual diminution in Buckley's standing with the public or in the journalistic world. This would preclude any award of special damages.

[28, 29] "General damages" can be awarded where, in spite of a failure to prove special or actual damages, there is sufficient evidence to permit an inference of some general impairment to the plaintiff's reputation or to his other interests. Restatement of Torts § 621. However, the evidence is not such as to permit even a finding of such general damages.

[30] I find it appropriate to award nominal damages only, plus punitive damages as will be described shortly. The Harper and James treatise describes the basis for the award of nominal damages, and the description applies to the present case (Vol. 1, p. 468):

> "The law 'presumes' some damage to reputation from the defamation itself. Moreover, the action for defamation performs a vindicatory function which, when the plaintiff is unable to prove damage and the circumstances are such that the jury is unwilling to infer actual damages in fact, can be attained only by the allowance of nominal damages. Accordingly, if the plaintiff shows the publication of language which is actionable per se, it is not necessary for him to prove any damages at all."

It should be noted that in both Reynolds v. Pegler, supra and Goldwater v. Ginzburg, supra the juries awarded nominal damages of $1.00 under the compensatory heading, prior to awarding punitive damages.

[31] Under the New York law, punitive damages may be awarded where the publication is activated by a desire to harm the plaintiff, or where the publication is so recklessly made as to indicate a heedless disregard for the rights of others. Clevenger v. Baker Voorhis & Co., 19 A.D.2d 240, 243 N.Y.S.2d 231, 232 (1st Dept. 1963), aff'd 14 N.Y.2d 536, 248 N.Y.S.2d 396 (1964). The purpose of punitive damages is to assist in protecting the plaintiff's reputation, and to protect against like abuse of other persons similarly situated. Goldwater v. Ginzburg, *supra* 414 F.2d at 341.

[32] I hold that punitive damages in the present case are appropriate and justified. It is clear from all that I have said previously that Littell's statements about Buckley in *Wild Tongues* were at least made with reckless disregard of the effects upon Buckley. My award of punitive damages is in the sum of $7,500. Although this award is moderate in comparison with the awards in some cases, it is a substantial sum of money to an author such as Littell.

I decline to grant Buckley's request for attorneys' fees.

Conclusion

For the foregoing reasons, Buckley is entitled to judgment in the amount of compensatory damages of $1.00 and punitive damages of $7,500.

The Clerk is directed to enter judgment in accordance with this opinion.

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FILED
MAY 27 1975
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

WILLIAM F. BUCKLEY, JR.

Plaintiff : 70 Civil 2844 (TPG)

-against-

: JUDGMENT
#75,445

THE MACMILLAN CO. and
FRANKLIN H. LITTELL :

Defendants

- X

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Thomas P. Griesa, United States District Judge, on April 22,23,24,26, May 3, June 10,11,12, 13,14 and December 10 and 13, 1974, and at the conclusion of the evidence the Court having reserved its decision, and the action having been settled between plaintiff and defendant MacMillan Co., and the Court thereafter on May 23, 1975, having handed down its opinion constituting its findings of fact and conclusions of law, in favor of the plaintiff, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff WILLIAM F. BUCKLEY,JR., have judgment against defendant FRANKLIN H. LITTELL, in the amount of $1,00., for compensatory damages, and in the amount of $7,500., for punitive damages, and it is further,

ORDERED: That the action be and it is hereby discontinued as to defendant The MacMillan Co.

Dated: New York, N.Y.
May 27, 1975

Raymond F. Burghardt
Clerk

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